

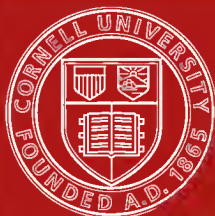
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**Rules of the Supreme Court of the United**



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**Rules of the Supreme Court of the  
United States**

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**Rules with Reference to Appeals  
from the Court of Claims**

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**Rules of Practice for the Courts of  
Equity of the United States**

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**Rules of Practice of the Courts of  
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U.S. SUPREME COURT



JUL 30 '68

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**RULES**  
**OF THE**  
**SUPREME COURT OF**  
**THE UNITED STATES**

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WASHINGTON  
March 1, 1918



## INDEX TO RULES OF THE SUPREME COURT.

	Page.
Abatement by reason of no appearance by representatives of deceased party.....	24
Act of March 2, 1907, cases under to have 45 minutes to a side for oral argument.....	30
Adjournment, provisions concerning.....	36
Advancement of cases.....	35
once adjudicated.....	35
criminal.....	35
revenue.....	35
involving only jurisdiction of lower court.....	38
Admiralty cases.....	22
further proof in.....	20
records in.....	17
Agreed records, may be sent up.....	15
Appeals and writs of error direct from district courts.....	40
in cases involving jurisdiction of district court.....	38
under act of Mar. 3, 1911.....	40
Appearance of counsel required to docket case.....	18
for either party, no.....	26
for defendant in error, no.....	26
for plaintiff in error, no.....	26
Argument, on motions, time allowed for.....	11
oral, who may open, etc.....	30
order of.....	30
printed, not received after submission.....	27
printed, submission on.....	27
time allowed for.....	30
Assignment of errors, case not heard without.....	29
provisions concerning.....	39
under act of Mar. 3, 1911.....	39
Attachment for clerk's fees.....	20
Attorneys, oath of.....	9
qualifications of.....	9
Bail, when and how granted.....	41
Bill of exceptions.....	10
Bond on supersedeas.....	36
Brief for respondent, on petition for certiorari, when to be filed.....	42
Briefs.....	28
form of printed.....	38
not received after argument.....	27
of counsel for plaintiff in error or appellant, what to contain.....	28

Briefs—Continued.	Page.
of counsel for plaintiff in error or appellant, when to be filed.....	28
of counsel for defendant in error or appellee, what to contain.....	29
of counsel for defendant in error or appellee, when to be filed.....	29
service of upon adverse party.....	29
when to be indexed.....	29
Call and order of the docket.....	34
Cases dismissed in vacation.....	36
involving same question may be heard together.....	35
passed, how restored to call.....	35
Certified record as exhibit to petition for certiorari.....	42
Certified cases to have only 45 minutes a side in argument....	30
Certiorari to correct diminution of record.....	22
Certiorari, writs of to review causes, provisions concerning....	42
Circuit Courts of Appeals, cases from, etc.....	41
practice in cases from.....	43
Citations, service of.....	16
when returnable.....	16, 17
Clerk of the court, provisions as to.....	9
Clerk's fees, attachment for.....	20
deposit for.....	18
table of.....	32
Conference-room library.....	14
Continuance if neither party be ready for argument.....	34
Cost of printing, to be taxed against whom.....	20
Costs, deposit on account of.....	18
not to be allowed for or against the United States.....	32
of transcript from court below to be taxed.....	31
to be inserted in mandate.....	32
when to be allowed, etc.....	31
Counsel, admission of.....	9
appearance of.....	18
no appearance of.....	26
two only to be heard on argument.....	30
Cross appeals, to be argued as one.....	30
order of argument in.....	30
Custody of prisoners on habeas corpus.....	39
Damages for delay, when to be allowed.....	31
Death of a party.....	23
no appearance for representatives.....	24
prior to allowance of writ of error or appeal....	24
Deposit on account of costs.....	18
Designation of parts of record to be printed.....	20
Diminution of record, certiorari to correct.....	22
Direct appeals, etc, from district courts.....	40

	Page.
Dismissal for failure to deposit costs of printing-----	19
for failure to file brief-----	29
Dismissed cases, mandates to issue in-----	32
Dismissing cases in vacation-----	36
District courts, appeals and writs of error from-----	40
Docket, call of-----	34
Docketing and dismissing cases-----	17
Docketing cases-----	17
Docketing of cases by defendant in error or appellee-----	18
Enlargement of time before mandate may issue-----	43
of time for docketing cases-----	17
Errors, assignment of-----	29
not specified to be disregarded-----	29
specification of in briefs of plaintiff in error or appel- lant-----	28
Estimate of costs of printing to be made, etc-----	19
Evidence in record, objections to-----	22
new, in admiralty-----	22
new, how taken-----	22
Exceptions, bill of-----	10
Exhibits of material, etc-----	38
Fees, attachment for-----	20
of clerk to be computed on record as filed-----	21
security for-----	18
under act of March 3, 1883, table of-----	32
Form of printed records and briefs-----	38
Further proof, commission for-----	21
Habeas corpus, custody of prisoners on-----	39
Index to brief, when required-----	29
Interest, costs and fees under act of March 3, 1911-----	43
Interest at law-----	30
in admiralty-----	31
in equity-----	31
on judgments, how calculated-----	30
Jurisdiction of court below alone in issue, time for oral argu- ment of such cases-----	30
of lower court, cases involving-----	38
Law library, clerk to deposit records and briefs in-----	14
how books may be taken from-----	14
Library of conference room, custody of, etc-----	14
List of cases in briefs, when required, etc-----	29
Mandate, none to issue in twenty-eighth rule cases without order of court-----	36
Mandates to issue as of course after 30 days-----	43
in all cases of dismissal-----	32
Marshal to have custody of models, diagrams, etc-----	38
Models, diagrams, and exhibits of material, provisions con- cerning-----	38

	Page.
Motion day, Monday to be.....	13
Motions, notice of.....	12
notice and service of briefs.....	12
submission of.....	12
time allowed for argument of.....	11
to advance.....	35
cases once adjudicated.....	35
criminal cases.....	35
revenue cases.....	35
cases involving jurisdiction of district court.....	38
to be in writing, etc.....	11
to affirm.....	12
to dismiss, notice of.....	12
Neither party ready at second term.....	26
No appearance of plaintiff in error at hearing.....	26
of defendant in error at hearing.....	26
of either party at hearing.....	26
Notice of petitions for certiorari to be given.....	42
Oath of attorneys.....	9
Objections to evidence in record.....	22
One counsel only to be heard when no oral argument for other side.....	29
Opinion of lower court to be sent up with record.....	16
Opinions of the court.....	33
to be printed.....	33
to be filed for preservation.....	34
need not be copied for printing.....	34
Oral argument not permitted on petitions for certiorari.....	42
Oral arguments, who may open, etc.....	30
Order of publication, when to issue.....	23
Original papers, copies to be made for printer.....	19
when to be sent up, etc.....	16
Original records, not to be taken from office, etc.....	9
Original transcript, when to be sent to printer.....	19
Parties, death of.....	23
Passing of case, stipulation for, not binding on court, etc.....	36
Petition for certiorari, when in time.....	42
Petitions for certiorari, provisions concerning.....	42
for rehearing.....	37
Plaintiff in error or appellant, no appearance of.....	26
Practice in cases from Circuit Courts of Appeals.....	43
provisions as to.....	10
Printed arguments equivalent to appearance.....	27
not received after oral argument.....	27
submission on within first 90 days of term.....	27
Printing records.....	18
Printing, the clerk to supervise, etc.....	19
Prisoners, custody of, on habeas corpus.....	39

	Page.
Process, form of, etc.....	11
service of .....	11
Record .....	14
printing parts of .....	20
cost of .....	19
certiorari for diminution of .....	22
elimination of unnecessary parts in making up .....	15
in admiralty cases .....	17
in cases under act of March 3, 1911 .....	41
how printed .....	40
penalty for printing unnecessary parts .....	16
return of .....	15
to contain all necessary papers in full .....	16
to contain opinion of court below .....	16
to contain translations of papers in foreign languages .....	21
to be printed under supervision of clerk .....	19
printed, form of .....	38
thirty copies to be printed .....	19
Rehearing, petitions for .....	37
Representatives of deceased parties appearing .....	23
not appearing .....	24
Return day .....	16
Return to writ of error .....	14
Revenue cases advanced on motion .....	35
Saturday, no arguments to be heard on .....	13
Second term, neither party ready at .....	26
Security for clerk's fees .....	18
Service of briefs upon adverse party .....	29
Specification of errors in brief .....	28
Statutes cited to be printed in briefs .....	29
Subpoena, service of .....	11
Summary docket, when cases to be transferred to .....	13
Supersedeas bonds .....	36
Table of fees, act of Mar. 3, 1883 .....	33
Ten cases only to be called on one day .....	34
Time allowed for argument .....	30
Transcript of record from court below, costs of to be taxed .....	31
Translations .....	21
Two counsel, only, to argue orally for each side .....	30
United States cases, no costs to be allowed in .....	32
Vacation, dismissal of cases in .....	36
Writ of error and appeal, return and record .....	14
Writ of error, return to .....	14
under act of Mar. 3, 1911 .....	40
Writs of error and appeals in cases involving jurisdiction of lower court .....	38





# RULES OF THE SUPREME COURT OF THE UNITED STATES.

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## 1.

### CLERK.

1. The clerk of this court shall reside and keep the office at the seat of the National Government, and he shall not practice, either as attorney or counsellor, in this court, or in any other court, while he shall continue to be clerk of this court.

2. The clerk shall not permit any original record or paper to be taken from the court room, or from the office, without an order from the court, except as provided by Rule 10.

## 2.

### ATTORNEYS AND COUNSELLORS.

1. It shall be requisite to the admission of attorneys or counsellors to practice in this court, that they shall have been such for three years past in the highest courts of the States to which they respectively belong, and that their private and professional characters shall appear to be fair.

2. They shall respectively take and subscribe the following oath or affirmation, viz:

I, \_\_\_\_\_, do solemnly swear (or affirm) that I will demean myself, as an attorney and counsellor of this court, uprightly, and according to law; and that I will support the Constitution of the United States.

## 3.

## PRACTICE.

This court considers the former practice of the courts of king's bench and of chancery, in England, as affording outlines for the practice of this court; and will, from time to time, make such alterations therein as circumstances may render necessary.

## 4.

## BILL OF EXCEPTIONS.

The judges of the district courts in allowing bills of exception shall give effect to the following rules:

1. No bill of exceptions shall be allowed which shall contain the charge of the court at large to the jury in trials at common law, upon any general exception to the whole of such charge. But the party excepting shall be required to state distinctly the several matters of law in such charge to which he excepts; and those matters of law, and those only, shall be inserted in the bill of exceptions and allowed by the court.

2. Only so much of the evidence shall be embraced in a bill of exceptions as may be necessary to present clearly the questions of law involved in the rulings to which exceptions are reserved, and such evidence as is embraced therein shall be set forth in condensed and narrative form, save as a proper understanding of the questions presented may require that parts of it be set forth otherwise.

5.

PROCESS.

1. All process of this court shall be in the name of the President of the United States, and shall contain the Christian names, as well as the surnames, of the parties.

2. When process at common law or in equity shall issue against a State, the same shall be served on the governor, or chief executive magistrate, and attorney-general of such State.

3. Process of subpoena, issuing out of this court, in any suit in equity, shall be served on the defendant sixty days before the return day of the said process; and if the defendant, on such service of the subpoena, shall not appear at the return day, the complainant shall be at liberty to proceed *ex parte*.

6.

MOTIONS.

1. All motions to the court shall be reduced to writing, and shall contain a brief statement of the facts and objects of the motion.

2. Forty-five minutes on each side shall be allowed to the argument of a motion, and no more, without special leave of the court, granted before the argument begins.

3. No motion to dismiss, except on special assignment by the court, shall be heard, unless previous notice has been given to the adverse party, or the counsel or attorney of such party.

4. All motions to dismiss writs of error and appeals, except motions to docket and dismiss under Rule 9, must be submitted in the first instance on printed briefs or arguments. If the court desires further argument on that subject, it will be ordered in connection with the hearing on the merits. The party moving to dismiss shall serve notice of the motion, with a copy of his brief of argument, on the counsel for plaintiff in error or appellant of record in this court, at least three weeks before the time fixed for submitting the motion, in all cases except where the counsel to be notified resides west of the Rocky Mountains, in which case the notice shall be at least thirty days. Affidavits of the deposit in the mail of the notice and brief to the proper address of the counsel to be served, duly post-paid, at such time as to reach him by due course of mail, the three weeks or thirty days before the time fixed by the notice, will be regarded as *prima facie* evidence of service on counsel who reside without the District of Columbia. On proof of such service, the motion will be considered, unless, for satisfactory reasons, further time be given by the court to either party.

5. The court in any pending cause will receive a motion to affirm on the ground that it is manifest that the writ or appeal was taken for delay only, or that the questions on which the decision of the cause depend are so frivolous as not to need further argument. The same procedure shall apply to and

control such motions as is provided for in cases of motions to dismiss under paragraph 4 of this rule.

6. Although the court upon consideration of a motion to dismiss or a motion to affirm may refuse to grant the motion, it may nevertheless, if the conclusion is arrived at that the case is of such a character as not to justify extended argument, order the cause transferred for hearing to a summary docket. The hearing of the causes on such docket will be expedited, the court providing from time to time for such speedy disposition of the docket as the regular order of business may permit, and on the hearing of such causes one-half hour will be allowed each side for oral argument.

7. The court will not hear arguments on Saturday (unless for special cause it shall order to the contrary), but will devote that day to the other business of the court. The motion day shall be Monday of each week; and motions not required by the rules of the court to be put on the docket shall be entitled to preference immediately after the reading of opinions, if such motions shall be made before the court shall have entered upon the hearing of a case upon the docket.

7.

LAW LIBRARY.

1. During the session of the court, any gentleman of the bar having a case on the docket, and wishing to use any book or books in the law library, shall be

at liberty, upon application to the clerk of the court, to receive an order to take the same (not exceeding at any one time three) from the library, he being thereby responsible for the due return of the same within a reasonable time, or when required by the clerk. And in case the same shall not be so returned, the party receiving the same shall be responsible for and forfeit and pay twice the value thereof, and also one dollar per day for each day's detention beyond the limited time.

2. The clerk shall deposit in the law library, to be there carefully preserved, one copy of the printed record in every case submitted to the court for its consideration, and of all printed motions, briefs, or arguments filed therein.

3. The marshal shall take charge of the books of the court, together with such of the duplicate law books as Congress may direct to be transferred to the court, and arrange them in the conference room, which he shall have fitted up in a proper manner; and he shall not permit such books to be taken therefrom by any one except the justices of the court.

8.

WRIT OF ERROR AND APPEAL, RETURN AND RECORD.

1. The clerk of the court to which any writ of error may be directed shall make return of the same, by transmitting a true copy of the record, and of the assignment of errors, and of all proceedings in the case, under his hand and the seal of the court.

In order to enable the Clerk to perform such duty and for the purpose of reducing the size of transcripts of record in cases brought to this Court by appeal or writ of error, by eliminating all papers not necessary to the consideration of the questions to be reviewed, it shall be the duty of the appellant or plaintiff in error or his attorney to file with the clerk of the lower court, together with proof or acknowledgment of service of a copy on the appellee or defendant in error, or his counsel, a *praecipe* which shall indicate the portions of the record to be incorporated into the transcript of the record on such appeal or writ of error. Should the appellee or defendant in error, or his counsel, desire additional portions of the record incorporated into the transcript of the record to be filed in this Court, he shall file with the clerk of the lower court his *praecipe* also, within ten days thereafter, (unless the time shall be enlarged by a judge of the lower court or by a Justice of this Court), indicating such additional portions of the record desired by him.

The clerk of the lower court shall transmit to this Court as the transcript of the record in the case only the portions of the record below designated by both parties as above provided.

The parties or their counsel, however, may agree by written stipulation to be filed with the clerk of the lower court the portions of the record which shall constitute the transcript of record on appeal or writ of error, and the clerk in such case shall transmit only the papers designated in such stipulation.

If this Court shall find that portions of the record unnecessary to a proper presentation of the case have been incorporated into the transcript by either party, the Court may order that the whole or any part of the Clerk's fee for supervising the printing and of the cost of printing the record be paid by the offending party.

2. In all cases brought to this court, by writ of error or appeal, to review any judgment or decree, the clerk of the court by which such judgment or decree was rendered shall annex to and transmit with the record a copy of the opinion or opinions filed in the case.

3. No case will be heard until a complete record, containing in itself, and not by reference, all the papers, exhibits, depositions, and other proceedings which are necessary to the hearing in this court, shall be filed.

4. Whenever it shall be necessary or proper, in the opinion of the presiding judge in any district court, that original papers of any kind should be inspected in this court upon writ of error or appeal, such presiding judge may make such rule or order for the safe-keeping, transporting, and return of such original papers as to him may seem proper, and this court will receive and consider such original papers in connection with the transcript of the proceedings.

5. All appeals, writs of error, and citations must be made returnable not exceeding thirty days from the day of signing the citation, whether the return day fall in vacation or in term time, and be served before



the return day, except in writs of error and appeals from California, Oregon, Nevada, Washington, New Mexico, Utah, Arizona, Montana, Wyoming, North Dakota, South Dakota, Alaska, Idaho, Hawaii and Porto Rico, when the time shall be extended to sixty days and from the Philippine Islands to one hundred and twenty days.

6. The record in cases of admiralty and maritime jurisdiction, when under the requirements of law the facts have been found in the court below, and the power of review is limited to the determination of questions of law arising on the record, shall be confined to the pleadings, the findings of fact, and conclusions of law thereon, the bills of exceptions, the final judgment or decree, and such interlocutory orders and decrees as may be necessary to a proper review of the case.

## 9.

## DOCKETING CASES.

1. It shall be the duty of the plaintiff in error or appellant to docket the case and file the record thereof with the clerk of this court by or before the return day, whether in vacation or in term time. But, for good cause shown, the justice or judge who signed the citation, or any justice of this court, may enlarge the time, by or before its expiration, the order of enlargement to be filed with the clerk of this court. If the plaintiff in error or appellant shall fail to comply with this rule, the defendant in error or appellee may have the cause docketed and dismissed upon

producing a certificate, whether in term time or vacation, from the clerk of the court wherein the judgment or decree was rendered, stating the case and certifying that such writ of error or appeal has been duly sued out or allowed. And in no case shall the plaintiff in error or appellant be entitled to docket the case and file the record after the same shall have been docketed and dismissed under this rule, unless by order of the court.

2. But the defendant in error or appellee may, at his option, docket the case and file a copy of the record with the clerk of this court; and if the case is docketed and a copy of the record filed with the clerk of this court by the plaintiff in error or appellant within the period of time above limited and prescribed by this rule, or by the defendant in error or appellee at any time thereafter, the case shall stand for argument.

3. Upon the filing of the transcript of a record brought up by writ of error or appeal, the appearance of the counsel for the party docketing the case shall be entered.

10.

PRINTING RECORDS.

1. In all cases the plaintiff in error or appellant, on docketing a case and filing the record, shall make such cash deposit with the clerk for the payment of his fees as he may require or otherwise satisfy him in that behalf.

2. Immediately after the designation of the parts of the record to be printed or the expiration of the time allotted therefor, the clerk shall make an estimate of the cost of printing the record, his fee for preparing it for the printer and supervising fee, and other probable fees, and upon application therefor shall furnish the same to the party docketing the case. If such estimated sum be not paid within ninety days after the cause is docketed, it shall be the duty of the clerk to report that fact to the court, and thereupon the cause will be dismissed, unless good cause to the contrary is shown.

3. Upon payment of the amount estimated by the clerk, thirty copies of the record shall be printed, under his supervision, for the use of the court and of counsel.

4. In cases of appellate jurisdiction the original transcript on file shall be taken by the clerk to the printer. But the clerk shall cause copies to be made for the printer of such original papers, sent up under Rule 8, section 4, as are necessary to be printed; and of the whole record in cases of original jurisdiction.

5. The clerk shall supervise the printing, and see that the printed copy is properly indexed. He shall distribute the printed copies to the justices and the reporter, from time to time, as required, and a copy to the counsel for the respective parties.

6. If the actual cost of printing the record, together with the fee of the clerk, shall be less than the amount estimated and paid, the amount of the differ-

ence shall be refunded by the clerk to the party paying it. If the actual cost and clerk's fee shall exceed the estimate, the amount of the excess shall be paid to the clerk before the delivery of a printed copy to either party or his counsel.

7. In case of reversal, affirmance, or dismissal, with costs, the amount of the cost of printing the record and of the clerk's fee shall be taxed against the party against whom costs are given, and shall be inserted in the body of the mandate or other proper process.

8. Upon the clerk's producing satisfactory evidence, by affidavit or the acknowledgment of the parties or their sureties, of having served a copy of the bill of fees due by them, respectively, in this court, on such parties or their sureties, an attachment shall issue against such parties or sureties, respectively, to compel payment of said fees.

9. When the record is filed, or within twenty days thereafter, the plaintiff in error or appellant may file with the clerk a statement of the points on which he intends to rely and of the parts of the record which he thinks necessary for the consideration thereof, with proof of service of the same on the adverse party. The adverse party, within thirty days thereafter, may designate in writing, filed with the clerk, additional parts of the record which he thinks material; and, if he shall not do so, he shall be held to have consented to a hearing on the parts designated by the plaintiff in error or appellant. If parts of the record shall be so designated by one or both of the parties, the clerk shall print those parts only; and the court will consider nothing but those

parts of the record and the points so stated. If at the hearing it shall appear that any material part of the record has not been printed, the writ of error or appeal may be dismissed or such other order made as the circumstances may appear to the court to require. If the defendant in error or appellee shall have caused unnecessary parts of the record to be printed, such order as to costs may be made as the court shall think proper.

The fees of the clerk under Rule 24, section 7, shall be computed, as at present, on the folios in the record as filed, and shall be in full for the performance of his duties in the execution hereof.

#### 11.

##### TRANSLATIONS.

Whenever any record transmitted to this court upon a writ of error or appeal shall contain any document, paper, testimony, or other proceedings in a foreign language, and the record does not also contain a translation of such document, paper, testimony, or other proceedings, made under the authority of the inferior court, or admitted to be correct, the record shall not be printed; but the case shall be reported to this court by the clerk, and the court will order that a translation be supplied and inserted in the record.

#### 12.

##### FURTHER PROOF.

1. In all cases where further proof is ordered by the court, the depositions which may be taken shall be by a commission, to be issued from this court, or from any district court of the United States.

2. In all cases of admiralty and maritime jurisdiction, where new evidence shall be admissible in this court, the evidence by testimony of witnesses shall be taken under a commission to be issued from this court, or from any district court of the United States, under the direction of any judge thereof; and no such commission shall issue but upon interrogatories, to be filed by the party applying for the commission, and notice to the opposite party or his agent or attorney, accompanied with a copy of the interrogatories so filed, to file cross-interrogatories within twenty days from the service of such notice: Provided, however, That nothing in this rule shall prevent any party from giving oral testimony in open court in cases where by law it is admissible.

## 13.

## OBJECTIONS TO EVIDENCE IN THE RECORD.

In all cases of equity or admiralty jurisdiction, heard in this court, no objection shall hereafter be allowed to be taken to the admissibility of any deposition, deed, grant, or other exhibit found in the record as evidence, unless objection was taken thereto in the court below and entered of record; but the same shall otherwise be deemed to have been admitted by consent.

## 14.

## CERTIORARI.

No *certiorari* for diminution of the record will be hereafter awarded in any case, unless a motion therefor shall be made in writing, and the facts on

which the same is founded shall, if not admitted by the other party, be verified by affidavit. And all motions for *certiorari* must be made at the first term of the entry of the case; otherwise, the same will not be granted, unless upon special cause shown to the court, accounting satisfactorily for the delay.

## 15.

## DEATH OF A PARTY.

1. Whenever, pending a writ of error or appeal in this court, either party shall die, the proper representatives in the personalty or realty of the deceased party, according to the nature of the case, may voluntarily come in and be admitted parties to the suit, and thereupon the case shall be heard and determined as in other cases; and if such representatives shall not voluntarily become parties, then the other party may suggest the death on the record, and thereupon, on motion, obtain an order that unless such representatives shall become parties within the first ten days of the ensuing term, the party moving for such order, if defendant in error or appellee shall be entitled to have the writ of error or appeal dismissed; and if the party so moving shall be plaintiff in error or appellant he shall be entitled to open the record, and on hearing have the judgment or decree reversed, if it be erroneous: Provided, however, That a copy of every such order shall be printed in some newspaper of general circulation within the State, Territory, or District from which the case is brought, for three

successive weeks, at least sixty days before the beginning of the term of the Supreme Court then next ensuing.

2. When the death of a party is suggested, and the representatives of the deceased do not appear by the tenth day of the second term next succeeding the suggestion, and no measures are taken by the opposite party within that time to compel their appearance, the case shall abate.

3. When either party to a suit in a court of the United States shall desire to prosecute a writ of error or appeal to the Supreme Court of the United States, from any final judgment or decree, rendered in such court, and at the time of suing out such writ of error or appeal the other party to the suit shall be dead and have no proper representative within the jurisdiction of the court which rendered such final judgment or decree, so that the suit can not be revived in that court, but shall have a proper representative in some State or Territory of the United States, the party desiring such writ of error or appeal may procure the same, and may have proceedings on such judgment or decree superseded or stayed in the same manner as is now allowed by law in other cases, and shall thereupon proceed with such writ of error or appeal as in other cases. And within thirty days after the commencement of the term to which such writ of error or appeal is returnable, the plaintiff in error or appellant shall make a suggestion to the court, supported by affidavit, that the said party was dead when the writ of error or



appeal was taken or sued out, and had no proper representative within the jurisdiction of the court which rendered said judgment or decree, so that the suit could not be revived in that court, and that said party had a proper representative in some State or Territory of the United States, and stating therein the name and character of such representative, and the State or Territory in which such representative resides; and, upon such suggestion, he may, on motion, obtain an order that, unless such representative shall make himself a party within the first ten days of the ensuing term of the court, the plaintiff in error or appellant shall be entitled to open the record, and, on hearing, have the judgment or decree reversed, if the same be erroneous: Provided, however, That a proper citation reciting the substance of such order shall be served upon such representative, either personally or by being left at his residence, at least sixty days before the beginning of the term of the Supreme Court then next ensuing: And provided, also, That in every such case if the representative of the deceased party does not appear by the tenth day of the term next succeeding said suggestion, and the measures above provided to compel the appearance of such representative have not been taken within time as above required, by the opposite party, the case shall abate: And provided, also, That the said representative may at any time before or after said suggestion come in and be made a party to the suit, and thereupon the case shall proceed, and be heard and determined as in other cases.

## 16.

## NO APPEARANCE OF PLAINTIFF IN ERROR OR APPELLANT.

Where no counsel appears and no brief has been filed for the plaintiff in error or appellant, when the case is called for trial, the defendant in error or appellee may have the plaintiff in error or appellant called and the writ of error or appeal dismissed, or may open the record and pray for an affirmance.

## 17.

## NO APPEARANCE OF DEFENDANT IN ERROR OR APPELLEE.

Where the defendant in error or appellee fails to appear when the case is called for trial, the court may proceed to hear an argument on the part of the plaintiff in error or appellant and to give judgment according to the right of the case.

## 18.

## NO APPEARANCE OF EITHER PARTY.

When a case is reached in the regular call of the docket, and there is no appearance for either party, the case shall be dismissed at the cost of the plaintiff in error or appellant.

## 19.

## NEITHER PARTY READY AT SECOND TERM.

When a case is called for argument at two successive terms, and upon the call at the second term neither party is prepared to argue it, it shall be dis-

missed at the cost of the plaintiff in error or appellant, unless sufficient cause is shown for further postponement.

## 20.

## PRINTED ARGUMENTS.

1. In all cases brought here on writ of error, appeal, or otherwise, the court will receive printed arguments without regard to the number of the case on the docket, if the counsel on both sides shall choose to submit the same within the first ninety days of the term; and, in addition, appeals from the Court of Claims may be submitted by both parties within thirty days after they are docketed, but not after the first day of April; but thirty copies of the arguments, signed by attorneys or counsellors of this court, must be first filed.

2. When a case is reached in the regular call of the docket, and a printed argument shall be filed for one or both parties, the case shall stand on the same footing as if there were an appearance by counsel.

3. When a case is taken up for trial upon the regular call of the docket, and argued orally in behalf of only one of the parties, no printed argument for the opposite party will be received, unless it is filed before the oral argument begins, and the court will proceed to consider and decide the case upon the *ex parte* argument.

4. No brief or argument will be received, either through the clerk or otherwise, after a case has been argued or submitted, except upon leave granted in open court after notice to opposing counsel.

## 21.

## BRIEFS.

1. The counsel for plaintiff in error or appellant shall file with the clerk of the court, at least three weeks before the case is called for argument, thirty copies of a printed brief, one of which shall, on application, be furnished to each of the counsel engaged upon the opposite side.

2. This brief shall contain, in the order here stated—

(1) A concise abstract, or statement of the case, presenting succinctly the questions involved and the manner in which they are raised.

(2) A specification of the errors relied upon, which, in cases brought up by writ of error, shall set out separately and particularly each error asserted and intended to be urged; and in cases brought up by appeal the specification shall state, as particularly as may be, in what the decree is alleged to be erroneous. When the error alleged is to the admission or to the rejection of evidence, the specification shall quote the full substance of the evidence admitted or rejected. When the error alleged is to the charge of the court, the specification shall set out the part referred to *totidem verbis*, whether it be instructions given or instructions refused. When the error alleged is to a ruling upon the report of a master, the specification shall state the exception to the report and the action of the court upon it.

(3) A brief of the argument, exhibiting a clear statement of the points of law or fact to be discussed, with a reference to the pages of the record

and the authorities relied upon in support of each point. When a statute of a State is cited, so much thereof as may be deemed necessary to the decision of the case shall be printed at length.

3. The counsel for a defendant in error or an appellee shall file with the clerk thirty printed copies of his argument, at least one week before the case is called for hearing. His brief shall be of like character with that required of the plaintiff in error or appellant, except that no specification of errors shall be required, and no statement of the case, unless that presented by the plaintiff in error or appellant is controverted.

4. When there is no assignment of errors, as required by section 997 of the Revised Statutes, counsel will not be heard, except at the request of the court; and errors not specified according to this rule will be disregarded; but the court, at its option, may notice a plain error not assigned or specified.

5. When, according to this rule, a plaintiff in error or an appellant is in default, the case may be dismissed on motion; and when a defendant in error or an appellee is in default, he will not be heard, except on consent of his adversary, and by request of the court.

6. When no oral argument is made for one of the parties, only one counsel will be heard for the adverse party.

7. No brief or printed argument, required by the foregoing sections, shall be filed by the clerk unless the same shall be accompanied by satisfactory proof of service upon counsel for the adverse party.

8. Every brief of more than twenty pages shall contain on its front fly leaves a subject index with page

references, the subject index to be supplemented by a list of all cases referred to, alphabetically arranged, together with references to pages where the cases are cited.

## 22.

## ORAL ARGUMENTS.

1. The plaintiff in error or appellant in this court shall be entitled to open and conclude the argument of the case. But when there are cross-appeals they shall be argued together as one case, and the plaintiff in the court below shall be entitled to open and conclude the argument.

2. Only two counsel will be heard for each party on the argument of a case.

3. One and one-half hours on each side will be allowed for the argument, and no more, without special leave of the court, granted before the argument begins. But in cases certified from the Circuit Courts of Appeals, cases involving solely the jurisdiction of the court below, and cases under the act of March 2, 1907, 34 Stat., 1246, forty-five minutes only on each side will be allowed for the argument unless the time be extended. The time thus allowed may be apportioned between the counsel on the same side, at their discretion; provided, always, that a fair opening of the case shall be made by the party having the opening and closing arguments.

## 23.

## INTEREST.

1. In cases where a writ of error is prosecuted to this court, and the judgment of the inferior court is affirmed, the interest shall be calculated and levied, from the date of the judgment below until the same is paid, at the same rate that similar judgments bear

interest in the courts of the State where such judgment is rendered.

2. In all cases where a writ of error shall delay the proceedings on the judgment of the inferior court, and shall appear to have been sued out merely for delay, damages at a rate not exceeding 10 per cent., in addition to interest, shall be awarded upon the amount of the judgment.

3. The same rule shall be applied to decrees for the payment of money in cases in equity, unless otherwise ordered by this court.

4. In cases in admiralty, damages and interest may be allowed if specially directed by the court.

24.

COSTS.

1. In all cases where any suit shall be dismissed in this court, costs shall be allowed to the defendant in error or appellee, unless otherwise agreed by the parties, except where the dismissal shall be for want of jurisdiction, when the costs incident to the motion to dismiss shall be allowed.

2. In all cases of affirmance of any judgment or decree in this court, costs shall be allowed to the defendant in error or appellee, unless otherwise ordered by the court.

3. In cases of reversal of any judgment or decree in this court, costs shall be allowed to the plaintiff in error or appellant, unless otherwise ordered by the court. The cost of the transcript of the record from the court below shall be a part of such costs, and be taxable in that court as costs in the case.

4. Neither of the foregoing sections shall apply to cases where the United States are a party; but in such cases no costs shall be allowed in this court for or against the United States.

5. In all cases of the dismissal of any suit in this court, it shall be the duty of the clerk to issue a mandate, or other proper process, in the nature of a *procedendo*, to the court below, for the purpose of informing such court of the proceedings in this court, so that further proceedings may be had in such court as to law and justice may appertain.

6. When costs are allowed in this court, it shall be the duty of the clerk to insert the amount thereof in the body of the mandate, or other proper process, sent to the court below, and annex to the same the bill of items taxed in detail.

7. In pursuance of the act of March 3, 1883, authorizing and empowering this court to prepare a table of fees to be charged by the clerk of this court, the following table is adopted:

For docketing a case and filing and indorsing the transcript of the record, five dollars.

For entering an appearance, twenty-five cents.

For entering a continuance, twenty-five cents.

For filing a motion, order, or other paper, twenty-five cents.

For entering any rule, or for making or copying any record or other paper, twenty cents per folio of each one hundred words.

For transferring each case to a subsequent docket and indexing the same, one dollar.



For entering a judgment or decree, one dollar.

For every search of the records of the court, one dollar.

For a certificate and seal, two dollars.

For receiving, keeping, and paying money in pursuance of any statute or order of court, two per cent. on the amount so received, kept, and paid.

For an admission to the bar and certificate under seal, ten dollars.

For preparing the record or a transcript thereof for the printer, indexing the same, supervising the printing, and distributing the printed copies to the justices, the reporter, the law library, and the parties or their counsel, fifteen cents per folio; but when the necessary printed copies of the record, as printed for the use of the lower court, shall be furnished, the fee for supervising shall be five cents per folio.

For making a manuscript copy of the record, when required under Rule 10, twenty cents per folio, but nothing in addition for supervising the printing.

For issuing a writ of error and accompanying papers, five dollars.

For a mandate or other process, five dollars.

For filing briefs, five dollars for each party appearing.

For every printed copy of any opinion of the court or any justice thereof, certified under seal, two dollars.

25.

OPINIONS OF THE COURT.

1. All opinions delivered by the court shall, immediately upon the delivery thereof, be handed to the

clerk to be printed. And it shall be the duty of the clerk to cause the same to be forthwith printed, and to deliver a copy to the reporter as soon as the same shall be printed.

2. The original opinions of the court shall be filed with the clerk of this court for preservation.

3. Opinions printed under the supervision of the justices delivering the same need not be copied by the clerk into a book of records; but at the end of each term the clerk shall cause such printed opinions to be bound in a substantial manner into one or more volumes, and when so bound they shall be deemed to have been recorded.

26.

CALL AND ORDER OF THE DOCKET.

1. The court, on the second day in each term, will commence calling the cases for argument in the order in which they stand on the docket, and proceed from day to day during the term in the same order (except as hereinafter provided); and if the parties, or either of them, shall be ready when the case is called, the same will be heard; and if neither party shall be ready to proceed in the argument, the case shall be continued to the next term of the court unless some good and satisfactory reason to the contrary shall be shown to the court.

2. Ten cases only shall be considered as liable to be called on each day during the term. But on the coming in of the court on each day the entire number of such ten cases will be called, with a view to the disposition of such of them as are not to be argued.

3. Criminal cases may be advanced by leave of the court on motion of either party.

4. Cases once adjudicated by this court upon the merits, and again brought up by writ of error or appeal, may be advanced by leave of the court on motion of either party.

5. Revenue and other cases in which the United States are concerned, which also involve or affect some matter of general public interest, or which may be entitled to precedence under the provisions of any act of Congress, may also by leave of the court be advanced on motion of the Attorney-General.

6. All motions to advance cases must be printed, and must contain a brief statement of the matter involved, with the reasons for the application.

7. No other case will be taken up out of the order on the docket, or be set down for any particular day, except under special and peculiar circumstances to be shown to the court.

8. Two or more cases, involving the same question, may, by the leave of the court, be heard together, but they must be argued as one case.

9. If, after a case has been passed, the parties shall desire to have it heard, they may file with the clerk their joint request to that effect, and the case shall then be by him reinstated for call ten cases after that under argument, or next to be called at the end of the day the request is filed. If the parties will not unite in such a request, either may move to take up the case, and it shall then be assigned to such place upon the docket as the court may direct.

10. No stipulation to pass a case will be recognized as binding upon the court. A case can only be so passed upon application made and leave granted in open court.

## 27.

## ADJOURNMENT.

The court will, at every term, announce on what day it will adjourn at least ten days before the time which shall be fixed upon, and the court will take up no case for argument, nor receive any case upon printed briefs, within three days next before the day fixed upon for adjournment.

## 28.

## DISMISSING CASES IN VACATION.

Whenever the plaintiff and defendant in a writ of error pending in this court, or the appellant and appellee in an appeal, shall in vacation, by their attorneys of record, sign and file with the clerk an agreement in writing directing the case to be dismissed, and specifying the terms <sup>on</sup> which it is to be dismissed as to costs, and shall pay to the clerk any fees that may be due to him, it shall be the duty of the clerk to enter the case dismissed, and to give to either party requesting it a copy of the agreement filed; but no mandate or other process shall issue without an order of the court.

## 29.

## SUPERSEDEAS. ,

Supersedeas bonds in the district courts and Circuit Courts of Appeals must be taken, with good and

sufficient security, that the plaintiff in error or appellant shall prosecute his writ or appeal to effect, and answer all damages and costs if he fail to make his plea good. Such indemnity, where the judgment or decree is for the recovery of money not otherwise secured, must be for the whole amount of the judgment or decree, including just damages for delay, and costs and interest on the appeal; but in all suits where the property in controversy necessarily follows the event of the suit, as in real actions, replevin, and in suits on mortgages, or where the property is in the custody of the marshal under admiralty process, as in case of capture or seizure, or where the proceeds thereof, or a bond for the value thereof, is in the custody or control of the court, indemnity in all such cases is only required in an amount sufficient to secure the sum recovered for the use and detention of the property, and the costs of the suit, and just damages for delay, and costs and interest on the appeal.

## 30.

## REHEARING.

A petition for rehearing after judgment can be presented only at the term at which judgment is entered, unless by special leave granted during the term; and must be printed and briefly and distinctly state its grounds, and be supported by certificate of counsel; and will not be granted, or permitted to be argued, unless a justice who concurred in the judgment desires it, and a majority of the court so determines.

## 31.

## FORM OF PRINTED RECORDS AND BRIEFS.

All records, arguments, and briefs, printed for the use of the court, must be in such form and size that they can be conveniently bound together, so as to make an ordinary octavo volume; and, as well as all quotations contained therein, and the covers thereof, must be printed in clear type (never smaller than small pica) and on unglazed paper.

## 32.

## WRITS OF ERROR AND APPEALS IN CASES INVOLVING JURISDICTION OF LOWER COURT.

Cases brought to this court by writ of error or appeal, where the only question in issue is the question of the jurisdiction of the court below, will be advanced on motion, and heard under the rules prescribed by Rule 6, in regard to motions to dismiss writs of error and appeals.

## 33.

## MODELS, DIAGRAMS, AND EXHIBITS OF MATERIAL.

1. Models, diagrams, and exhibits of material forming part of the evidence taken in the court below, in any case pending in this court, on writ of error or appeal, shall be placed in the custody of the marshal of this court at least one month before the case is heard or submitted.

2. All models, diagrams, and exhibits of material, placed in the custody of the marshal for the inspection of the court on the hearing of a case, must be taken away by the parties within one month after the case is decided. When this is not done, it shall

be the duty of the marshal to notify the counsel in the case, by mail or otherwise, of the requirements of this rule; and if the articles are not removed within a reasonable time after the notice is given, he shall destroy them, or make such other disposition of them as to him may seem best.

## 34.

## CUSTODY OF PRISONERS ON HABEAS CORPUS.

1. Pending an appeal from the final decision of any court or judge declining to grant the writ of habeas corpus, the custody of the prisoner shall not be disturbed.

2. Pending an appeal from the final decision of any court or judge discharging the writ after it has been issued, the prisoner shall be remanded to the custody from which he was taken by the writ, or shall, for good cause shown, be detained in custody of the court or judge, or be enlarged upon recognizance as hereinafter provided.

3. Pending an appeal from the final decision of any court or judge discharging the prisoner, he shall be enlarged upon recognizance, with surety, for appearance to answer the judgment of the appellate court, except where, for special reasons, sureties ought not to be required.

## 35.

## ASSIGNMENT OF ERRORS.

1. Where an appeal or a writ of error is taken from a district court direct to this court, under section 238 of the act entitled "An act to codify, revise, and amend the laws relating to the judiciary,"

approved March 3, 1911, chapter 231, the plaintiff in error or appellant shall file with the clerk of the court below, with his petition for the writ of error or appeal, an assignment of errors, which shall set out separately and particularly each error asserted and intended to be urged. No writ of error or appeal shall be allowed until such assignment of errors shall have been filed. When the error alleged is to the admission or to the rejection of evidence, the assignment of errors shall quote the full substance of the evidence admitted or rejected. When the error alleged is to the charge of the court, the assignment of errors shall set out the part referred to *totidem verbis*, whether it be in instructions given or in instructions refused. Such assignment of errors shall form part of the transcript of the record, and be printed with it. When this is not done counsel will not be heard, except at the request of the court; and errors not assigned according to this rule will be disregarded, but the court, at its option, may notice a plain error not assigned.

2. The plaintiff in error or appellant shall cause the record to be printed, according to the provisions of sections 2, 3, 4, 5, 6, and 9, of Rule 10.

36.

APPEALS AND WRITS OF ERROR FROM DISTRICT COURTS.

1. An appeal or a writ of error from a district court direct to this court, in the cases provided for in §§ 238 and 252 of the act entitled, "An act to codify, revise, and amend the laws relating to the judiciary," approved March 3, 1911, chapter



231, may be allowed, in term time or in vacation by any justice of this court, or by any circuit judge assigned to the district court, or by any district judge within his district, and the proper security be taken and the citation signed by him, and he may also grant a supersedeas and stay of execution or of proceedings, pending such writ of error or appeal.

2. Where such writ of error is allowed in the case of a conviction of an infamous crime, or in any other criminal case in which it will lie under section 238, the district court, or any judge thereof, or any justice of this court, or any circuit judge assigned to the district court, shall have power, after the citation is served, to admit the accused to bail in such amount as may be fixed.

37.

CASES CERTIFIED AND PETITIONS FOR WRITS OF  
CERTIORARI.

1. Where, under section 239 of the act entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March 3, 1911, chapter 231, a Circuit Court of Appeals shall certify to this court a question or proposition of law, concerning which it desires the instruction of this court for its proper decision, the certificate shall contain a proper statement of the facts on which such question or proposition of law arises.

2. If application is thereupon made to this court that the whole record and cause may be sent up to it for its consideration, the party making such application shall, as a part thereof, furnish this court with a certified copy of the whole of said record.

3. Where an application is submitted to this court for a writ of certiorari to review a decision of a Circuit Court of Appeals or any other court, it shall be necessary for the petitioner to furnish as an exhibit to the petition a certified copy of the entire transcript of record of the case, including the proceedings in the court to which the writ of certiorari is asked to be directed. The petition shall contain only a summary and short statement of the matter involved and the general reasons relied on for the allowance of the writ. A failure to comply with this provision will be deemed a sufficient reason for denying the petition. Thirty printed copies of such petition and of any brief deemed necessary shall be filed. Notice of the date of submission of the petition, together with a copy of the petition and brief, if any, in support of the same shall be served on the counsel for the respondent at least two weeks before such date in all cases except where the counsel to be notified resides west of the Rocky Mountains, in which cases the time shall be at least three weeks. The brief for the respondent, if any, shall be filed at least three days before the date fixed for the submission of the petition. Oral argument will not be permitted on such petitions, and no petition will be received within three days next before the day fixed upon for the adjournment of the court for the term.

4. An application for a writ of certiorari will be deemed in time when the petition therefor, accompanied by the printed record and brief, is filed within

the period prescribed by law, provided this is followed by submitting the petition in open court on some motion day not later than the first one which follows a period of four weeks after such filing. Notice of the date of submission and copies of the petition and brief must be served as required by section 3 of this rule.

## 38.

## INTEREST, COSTS, AND FEES.

The provisions of Rules 23 and 24 of this court, in regard to interest and costs and fees, shall apply to writs of error and appeals and reviews under the provisions of sections 238, 239, 240, and 241 of the act entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March 3, 1911, chapter 231.

## 39.

## MANDATES.

Mandates shall issue as of course after the expiration of thirty days from the day the judgment or decree is entered, unless the time is enlarged by order of the court, or of a justice thereof when the court is not in session, but during the term.

## 40.

## PRACTICE IN CASES FROM CIRCUIT COURTS OF APPEALS.

The provisions of these rules relating to the practice on direct writs of error to and appeals from the district courts shall also be deemed to relate to and cover the practice on writs of error to and appeals from the Circuit Court of Appeals.



# RULES IN REFERENCE TO APPEALS FROM THE COURT OF CLAIMS.

REGULATIONS PRESCRIBED BY THE SUPREME COURT OF THE  
UNITED STATES UNDER WHICH APPEALS MAY BE TAKEN  
FROM THE COURT OF CLAIMS TO SAID SUPREME COURT.

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## Rule 1.

In all cases hereafter decided in the Court of Claims in which, by the act of Congress, such appeals are allowable, they shall be heard in the Supreme Court upon the following record, and none other:

1. A transcript of the pleadings in the case, of the final judgment or decree of the court, and of such interlocutory orders, rulings, judgments, and decrees as may be necessary to a proper review of the case.

2. A finding by the Court of Claims of the facts in the case established by the evidence in the nature of a special verdict, but not the evidence establishing them; and a separate statement of the conclusions of law upon said facts, upon which the court founds its judgment or decree. The finding of facts and conclusions of law to be certified to this court as a part of the record.

OCTOBER TERM, 1882.

*Ordered*, That Rule 1, in reference to appeals from the Court of Claims, be, and the same is hereby, made applicable to appeals in all cases heretofore or hereafter decided by that court under the jurisdiction conferred by the act of June 16, 1880, c. 243, "to provide for the settlement of all outstanding claims against the District of Columbia, and conferring jurisdiction on the Court of Claims to hear the same, and for other purposes."

**Rule 2.**

In all cases in which judgments or decrees have heretofore been rendered, where either party is by law entitled to an appeal, the party desiring it shall make application to the Court of Claims by petition for the allowance of such appeal. Said petition shall contain a distinct specification of the errors alleged to have been committed by said court in its rulings, judgment, or decree in the case. The court shall, if the specification of the alleged error be correctly and accurately stated, certify the same, or may certify such alternations and modifications of the points decided and alleged for error as, in the judgment of said court, shall distinctly, fully, and fairly present the points decided by the court. This, with the transcript mentioned in Rule 1 (except the statement of facts and law therein mentioned), shall constitute the

record on which those cases shall be heard in the Supreme Court.

**Rule 3.**

In all cases an order of allowance of appeal by the Court of Claims, or the chief justice thereof in vacation, is essential, and the limitation of time for *granting* such appeal shall cease to run from the time an application is made for the allowance of appeal.

**Rule 4.**

In all cases in which either party is entitled to appeal to the Supreme Court, the Court of Claims shall make and file their finding of facts, and their conclusions of law therein, in open court, before or at the time they enter their judgment in the case.

**Rule 5.**

In every such case each party at such time before trial and in such form as the court may prescribe, shall submit to it a request to find all the facts which the party considers proven and deems material to the due presentation of the case in the finding of facts.





# RULES OF PRACTICE FOR THE COURTS OF EQUITY OF THE UNITED STATES

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PROMULGATED BY THE<sup>7</sup>  
SUPREME COURT OF THE UNITED STATES  
NOVEMBER 4, 1912



WASHINGTON  
GOVERNMENT PRINTING OFFICE  
1918



## INDEX TO EQUITY RULES.

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	Rule.	Page.
Abatement, defenses formerly presentable by, to be made in answer.....	29	36
Absence of persons who would be proper parties.....	39	41
Account:		
Matters of, reference to master.....	59	53
To be identified but not stated in master's report.....	61	54
Forms of, before master.....	63	55
Action:		
At law, erroneously begun as suit in equity, transfer.....	22	32
Joinder of, causes of.....	26	34
To be presented in name of real party in interest.....	37	40
Additional rules, by district court.....	79	65
Administrator as party.....	37	40
Admissibility of evidence offered to be passed on by court....	46	44
Admission of execution, etc., of documents, etc.....	58	52
Advancement of causes, notice of interlocutory orders, etc....	6	26
Affidavit:		
Plaintiff's, of noncompliance with decree, attachment to issue.....	8	27
To be made of service of process by person appointed therefor.....	15	30
Of expert witnesses in patent and trade-mark cases, provisions as to.....	48	45
Required on application for continuance.....	57	50
To be identified but not stated in master's report.....	61	54
Previously used in court, etc., may be used before master.	64	56
On application for preliminary injunction.....	73	60
Affirmation in lieu of oath.....	78	64
Agreed statement, record on appeal.....	77	64
Alternative defenses may be stated in answer.....	30	37
Amended bill, answer to.....	32	38
Amendments:		
Generally.....	19	31
Permitted of any process, pleading, record, etc.....	19	31
Of bill—		
As of course.....	28	35
Not after defendant's pleading filed, except, etc.....	28	36
On suggestion of defect of parties.....	43	43
Of pleadings on substitution of parties.....	45	44

Answer:	Rule.	Page.
Subpoena, proper process to compel.....	7	26
Time for.....	12	29
To be filed within time named in subpoena.....	16	30
Enlarging time for filing.....	17	31
When to be filed, on motion set aside decree pro confesso..	17	31
Exceptions to, for scandal and impertinence, shall not obtain.....	21	32
Defenses to be presented in.....	29	36
To be filed if motion to dismiss denied.....	29	36
If not filed, decree pro confesso entered.....	29	36
Defenses formerly presentable by plea in bar or abatement, to be made in.....	29	36
What to contain.....	30	37
Amendment of, by leave, on reasonable notice.....	30	37
To omit statement of evidence.....	30	37
To avoid general denial of averments of bill.....	30	37
To specifically admit, or deny, or explain facts upon which plaintiff relies.....	30	37
Contents, counterclaim.....	30	37
To state counterclaims.....	30	37
May state defenses in alternative.....	30	37
Cause at issue on filing of, unless, etc.....	31	38
To amended bill.....	32	38
New or supplemental, to be filed to amended bill.....	32	38
Exceptions for insufficiency of, abolished.....	33	39
If insufficient may be amended or matter stricken out....	33	39
When defect of parties suggested, proceedings on.....	43	43
May be stricken out for failure to answer interrogations or produce documents.....	58	53
To be identified but not stated in master's report.....	61	54
Appeal:		
Injunction pending.....	74	61
Record on—		
Differences as to.....	75	63
Reduction and preparation.....	75	61
Costs—correction of omissions.....	76	63
Agreed statement.....	77	64
Appearance:		
Filed with clerk to be noted in equity docket.....	3	24
Subpoena proper process to compel.....	7	26
Appellant:		
To notify opposing party or solicitors, etc.....	75	61
To file præcipe indicating portion of record on appeal....	75	61
To condense evidence, etc.....	75	62
Appellate court:		
Not to reverse decree unless.....	46	44
May direct further steps as justice may require.....	46	45

	Rule.	Page.
Appellee to file præcipe indicating additional portions of record on appeal.....	75	61
Appointment and fees of stenographers.....	50	46
Appointment and compensation of masters.....	68	57
Assistance, writ of:		
When to issue.....	7	26
On refusal to obey decree for delivery of possession.....	9	28
Attachment:		
Provisions as to.....	7	26
For noncompliance with decree.....	8	27
Not to be discharged unless upon full compliance with decree, etc.....	8	27
May issue for failure to answer interrogatories or produce documents.....	58	52
Attendance of witnesses before commissioner, master, or examiner.....	52	48
Averments of bill, if not denied, deemed confessed, except, etc Bill:	30	37
Subpœna proper mesne process to compel appearance and answer to.....	7	26
When filed, clerk to issue subpœna.....	12	29
May be taken pro confesso if answer not filed, etc.....	12	29
Exceptions to, for scandal and impertinence, shall not obtain.....	21	32
To be signed by solicitors.....	24	33
Of complaint, contents.....	25	33
Stockholder's.....	27	35
Stockholder's, what to contain.....	27	35
Amendment of, as of course.....	28	35
Amended, answer to.....	32	38
Supplemental, what necessary in.....	35	39
Of revivor and supplemental bills, what necessary in....	35	39
May be dismissed for failure to answer interrogatories or produce documents.....	58	52
Verification of, on application for preliminary injunction, etc.....	73	60
Bond on order suspending, etc., injunction pending appeal..	74	61
Books:		
Clerk to keep equity docket, order book, equity journal.	3	24
Papers, etc., production of, required by master.....	62	55
Calendar, trial, case goes on, when.....	56	50
Cause, speeding, provision as to, on motion set aside decree pro confesso.....	17	30
Causes:		
Advancement, conduct, and hearing of, notice of interlocutory orders for.....	6	26
Of action, joinder of.....	26	34
Frivolous, imposition of costs on exceptions to master's report.....	67	57

	Rule.	Page.
Certificate, signature of solicitor to pleading to be considered..	24	33
Chambers, awarding process, commissions, orders, rules, etc., by judge at.....	1	23
Charge to be identified but not stated in master's report.....	61	54
Circuit court of appeals, if appeal lies to, rehearing not granted after term.....	69	58
Circuit judge may dispense with motion day if public interest permits.....	6	25
Citizenship, name, and residence of each party to be stated in bill.....	25	33
Claim, further and better statement of nature of, may be ordered.....	20	32
Claimants before master, examinable by him.....	65	56
Class, representatives of, may sue or defend.....	38	41
Clerical mistakes in orders and decrees, correction of.....	72	59
Clerk:		
Duties of.....	2	23
To keep—		
Equity docket.....	3	24
Order book.....	3	24
Equity journal.....	3	24
Motions grantable of course by.....	5	25
To grant as of course, motions and applications not re- quiring order of court or judge.....	5	25
To issue writ of assistance on refusal to obey decree for delivery of possession.....	9	28
To issue subpoena when bill filed, and not before.....	12	29
Of court, verification of pleadings before.....	36	40
To send copies of interrogatories to solicitors of record....	58	52
Office of—		
Awarding of process, commissions, orders, rules, etc., by judge at.....	1	23
When open.....	2	23
Master to return report into.....	66	56
Temporary restraining orders to be filed in.....	73	61
Statement as to appeal to be filed in.....	75	63
Commissioner, attendance of witnesses before.....	52	48
Commissions, award of, by judge at chambers, etc.....	1	23
Compensation and appointment of masters.....	68	57
Compensation of master to be fixed by court.....	68	57
Competency, etc., of questions asked before examiner not to be decided by him.....	51	47
Computation of time—Sundays and holidays.....	80	65
Conduct of causes, notice of interlocutory orders for.....	6	26
Contempt for noncompliance with mandatory order, etc.....	8	27
Continuances, provisions as to.....	57	50
Copy of præcipe:		
Indicating portions of record on appeal.....	75	62
Service of, indicating, etc.....	75	61

	Rule.	Page.
Corporate officer to sign interrogatories under oath.....	58	52
Corporation:		
When interrogatories to be answered by officer of.....	58	52
Stockholder's bill against.....	27	35
Correction:		
Clerical mistakes in orders and decrees.....	72	59
Omissions in transcript on appeal.....	76	63
Costs:		
Payment of, and full compliance with decree before a discharge of attachment.....	8	27
Of plaintiff to be paid before court will set aside decree pro confesso, etc.....	17	31
Terms as to, when further and particular statement in pleading required.....	20	32
To nominal parties.....	40	42
Stenographer's fees to be taxed as.....	50	47
Of incompetent, etc., depositions to be dealt with by court.....	51	47
On continuances, provisions as to.....	57	50
On proving execution or genuineness of document, etc..	58	53
On reference to master.....	59	53
On exception to master's report.....	67	57
May be imposed upon offending solicitors.....	76	63
Imposition of, for infraction of rule as to record on appeal..	76	63
Counsel:		
Signature of.....	24	33
To give notice of taking testimony before examiner, etc..	53	49
Consent of, to continuances, provisions as to.....	57	50
To sign petition for rehearing.....	69	58
Counterclaim:		
To be stated in answer.....	30	37
To be replied to.....	31	38
In default of reply to, decree pro confesso entered.....	31	38
Court:		
On motion or own initiative, may order redundant, impertinent, or scandalous matter stricken out.....	21	32
Testimony usually to be taken in, at trial.....	46	44
To deal with cost of incompetent, etc., depositions.....	51	47
Contempt of, by witness refusing to appear before commissioner, master, or examiner.....	52	48
May appoint standing masters in chancery.....	68	57
Provisions as to approval by, of appellant's statement, etc., on appeal.....	75	62
District, additional rules by.....	79	65
Creditor making claim before master examinable by him.....	65	56
Cross bill—counterclaim to be stated in answer, and not by..	30	37
Cross-examination of expert witnesses in patent and trademark cases.....	48	46
Cross-examination of witness where no notice of deposition given.....	54	49

	Rule.	Page.
Damage.		
Averments in bill as to.....	30	37
To be shown on application for preliminary injunction...	73	60
Death of party, revivor.....	45	44
Decrees of court to be entered in equity journal.....	3	24
Decrees:		
Process to issue to compel obedience to.....	7	26
Compelling obedience to, writ of sequestration.....	8	27
Discharge of attachment upon compliance with.....	8	27
For specific performance, provision as to.....	8	27
For performance of specific act, attachment when.....	8	27
Solely for payment of money, writ of execution on.....	8	26
Final, enforcement of.....	8	26
For delivery of possession, writ of assistance on refusal to obey.....	9	28
For deficiency in foreclosures, etc.....	10	28
Pro confesso—		
On default in answer.....	16	30
When may be set aside.....	17	31
To be followed by final decree.....	17	31
Final, following decree pro confesso.....	17	31
Pro confesso—		
Entered, if answer not filed, etc.....	29	36
In default of reply to counterclaim.....	31	38
Not to be reversed unless material prejudice would result..	46	44
Form of.....	71	59
Shall not recite pleadings.....	71	59
Correction of clerical mistakes in.....	72	59
Final, appeals from in injunction suits.....	74	61
To be sent up with agreed statement on appeal.....	77	64
Deeds, etc., decree for delivering up, attachment in.....	8	27
Default:		
To answer, bill taken pro confesso.....	16	30
Of reply to counterclaim, decree pro confesso.....	31	38
In answer to amended bill, proceedings on.....	32	39
Defect:		
Court to disregard in proceeding not affecting substantial rights.....	19	31
Of parties—		
Resisting objection.....	43	43
Tardy objection to.....	44	43
Defendant:		
Subpœna proper process to compel appearance and answer of.....	7	26
If not found, writ of sequestration proper process to issue, etc.....	7	26
To take notice of certain decrees.....	8	27
Required to file answer on or before twentieth day after service of subpœna.....	12	29



Defendant—Continued.	Rule.	Page.
Service of subpoena to be upon.....	13	29
To answer within time named in subpoena.....	16	30
Person refusing to join as plaintiff or defendant may be made defendant.....	37	41
Time within which to take deposition for.....	47	45
Defense:		
Further and better statement of nature of, may be ordered.	20	32
How presented.....	29	36
What to be heard separately and disposed of before trial, etc.....	29	36
Testing sufficiency of.....	33	39
Deficiency in foreclosures, etc., decree for.....	10	28
Delay:		
Signature of solicitor to pleadings certificate that pleadings not interposed for.....	24	33
Master to certify reason for any to court.....	60	54
Imposition of costs for, on exceptions to master's report.	67	57
Delivery of possession, writ of assistance to enforce.....	7	26
Demands, joint and several.....	42	42
Demurrers abolished.....	29	36
Depositions:		
To be taken in exceptional instances.....	47	45
Time within which to be taken.....	47	45
Taken before examiners, etc.....	49	46
Expense of taking to be advanced by party calling witnesses.....	50	47
Court to deal with costs of incompetent, etc.....	51	47
Under R. S. 863, 865, 866, 867—cross-examination.....	54	49
Deemed published when filed.....	55	49
On expiration of time for, case goes on trial calendar....	56	50
To be identified but not set forth in master's report.....	61	54
May be taken by master.....	62	55
Etc., former, may be used before master.....	64	56
Previously used in court may be used before master.....	64	56
Differences concerning directions as to contents of record on appeal, provisions as to.....	75	63
Disability of any party to be stated in bill.....	25	33
Discovery, interrogatories for, when to be filed.....	58	52
Dismiss, motion to, setting down for hearing.....	29	36
Dismissal of causes continued, if not reinstated.....	57	51
District courts:		
Always open for certain purposes.....	1	23
To establish times and places when motions may be made and disposed of.....	6	25
Additional rules by.....	79	65
District judge may make, direct, and award process, commissions, orders, rules, etc.....	1	23

Documents:	Rule.	Page.
Inspection and production of.....	58	52
Court may enforce inspection and production of.....	58	52
Interrogatories for discovery of, when to be filed.....	58	52
Execution or genuineness of, call for admission of.....	58	53
Identified but not set forth in master's report.....	61	54
Production of, required by master.....	62	55
Previously used in court may be used before master....	64	56
Dwelling house, service of subpoena by leaving copy at....	13	29
Equity docket:		
Clerk to keep.....	3	24
Index of.....	3	24
Noting of order in, not notice.....	4	24
Day of return of master's report to be entered in.....	66	57
Equity journal:		
Clerk to keep.....	3	24
Index of.....	3	24
Equity, suit in:		
Action at law erroneously begun as—transfer.....	22	32
Matters ordinarily determinable at law when arising in, to be disposed of therein.....	23	33
Error or defect in proceedings, court to disregard when not affecting substantial rights.....	19	31
Evidence:		
Mere statement of, to be omitted from bill.....	25	34
Admissibility of, to be passed on by court.....	46	44
Offered and excluded, proceedings on.....	46	44
Affidavits of expert witnesses in patent and trade-mark cases, when not to be used as.....	48	46
Taken before examiners to be returned to court.....	49	46
Taken before examiners, provisions as to.....	51	47
Objections to, taken before examiner, etc.....	51	47
Court or judge may enforce answers to interrogatories and production of documents containing.....	58	52
Master may direct mode of proving matters before him....	62	55
Before master on examination to be taken down.....	65	56
How to be stated in record.....	75	62
Ex parte, cause to be proceeded with after decree pro confesso.	16	30
Examination to be identified but not stated in master's report.	61	54
Examiners:		
Evidence taken before—		
To be returned to court.....	49	46
Provisions as to.....	51	47
Not to decide on competency, materiality, or relevancy of questions.....	51	47
Attendance of witnesses before.....	52	48
Notice of taking testimony before, etc.....	53	49
Cross-examination of witness before.....	54	49

Exceptions:	Rule.	Page.
For insufficiency of answer abolished.....	33	39
To evidence offered and excluded, provisions as to.....	46	44
To master's report.....	66	57
Costs on.....	67	57
Execution:		
Writ of, provisions as to.....	8	26
Admission of, of documents, etc.....	58	52
Executor as party.....	37	40
Expert witnesses, testimony of, in patent and trade-mark cases.....	48	46
Facts:		
Ultimate statement of, upon which relief asked, to be stated in bill.....	25	34
Insufficiency of, as defense, how presented.....	29	36
Material, may be alleged in supplemental pleading.....	34	39
Not to be stated in master's report.....	61	54
Fees of stenographer.....	50	46
File number, each suit and all papers, process, etc., to be marked with, and noted on equity docket.....	3	24
Filing of deposition deemed publication.....	55	49
Final hearing, points of law may be disposed of before.....	29	36
Final process:		
Issue and return of.....	1	23
To be served by marshal, deputy, etc.....	15	30
Foreclosure of mortgages, etc., decree for balance due.....	10	28
Form of accounts before master.....	63	55
Form of decree.....	71	59
Former depositions, etc., may be used before master.....	64	56
Forms:		
Technical, of pleadings abrogated.....	18	31
Alternative—prayer for specific relief may be in.....	25	34
Genuineness of documents, admission of, etc.....	58	53
Guardian:		
As party.....	37	40
May sue for infants.....	70	59
Ad litem, may be appointed by court or judge, etc.....	70	58
Hearing:		
On merits—making and directing interlocutory motions, orders, rules, etc., preparatory to.....	7	23
Of causes, notice of interlocutory orders for.....	6	26
Final, points of law may be disposed of before.....	29	36
On exceptions to report of master.....	66	57
Heir as party to suits to execute trusts of will.....	41	42
Holidays:		
Legal, clerk's office not open.....	2	23
Computation of time.....	80	65
Impertinence, scandal, exceptions to bills, answers, etc., for, shall not obtain.....	21	32

	Rule.	Page.
Incompetents, suits by or against.....	70	58
Indices of equity docket, order book, and equity journal, clerk to keep.....	3	24
Infants:		
Nothing to be taken against as confessed.....	30	37
Nominal parties in suits not against.....	40	42
May sue by guardian or by prochein ami.....	70	59
Guardians ad litem may be appointed to defend suits against.....	70	58
Injunction:		
For specific performance, provision as to.....	8	27
Preliminary, and temporary restraining orders.....	73	60
Pending appeal.....	74	61
Insufficiency of fact, defense of, how presented.....	29	36
Interlocutory motions, orders, rules, etc., making and directing.....	1	23
Interrogatories:		
Written, practice as to, to be followed in case of refusal of witness before master, examiner, etc.....	52	48
When to be filed.....	58	52
When to be answered, etc.....	58	52
Court may enforce answers to.....	58	52
To be answered separately and fully, in writing, under oath and signed.....	58	52
Objections to, provisions as to.....	58	52
Copies to be sent by clerk to solicitors of record.....	58	52
Examination of accounting party before master on.....	58	52
Claimants before master examinable on.....	65	56
Intervention, when allowed.....	37	41
Issue:		
Of subpoena.....	12	29
Cause at, upon filing of answer, except, etc.....	31	38
Joinder of causes of action.....	26	34
Joinder of parties, provision as to.....	37	40
Joint and several demands.....	42	42
Judge:		
District, may make, direct, and award process, commissions, orders, rules, etc.....	1	23
In chambers, orders by, to be entered in order book.....	3	24
May suspend, alter, or rescind motion granted as of course by clerk.....	5	25
On notice, if any, may make interlocutory orders, etc.....	6	26
Verification of pleadings before.....	36	40
Jurisdiction, ground on which depends to be stated in bill.....	25	34
Justice, convenient administration of, joinder of causes of action to promote.....	26	35
Land, decree for conveyance of, attachment in.....	8	27

Law:	Rule.	Page.
Action erroneously begun as suit in equity—transfer.....	22	32
Matters ordinarily determinable at, when arising in suit in equity, to be disposed of therein.....	23	33
Points of, may be disposed of before final hearing.....	29	36
Letter, call for admission of genuineness of, etc.....	58	53
Loss, immediate and irreparable, to be shown on application for temporary restraining order.....	73	60
Lunatic, nothing to be taken against as confessed.....	30	37
Marshal, deputy, etc., to serve all process, except.....	15	30
Master:		
Attendance of witnesses before.....	52	48
Reference to, exceptional not usual.....	59	53
Proceedings before.....	60	54
Duties of.....	60	54
May proceed ex parte when.....	60	54
May adjourn examination, etc., when.....	60	54
To proceed with reasonable diligence.....	60	54
Reports of—documents to be identified but not set forth.....	61	54
Powers of.....	62	55
To regulate all proceedings before him.....	62	55
May require production of all books, papers, etc.....	62	55
Form of accounts before.....	63	55
Former depositions, etc., may be used before.....	64	56
Claimants before, examinable by him.....	65	56
Appointment and compensation of.....	68	57
Entitled to attachment for his compensation, when.....	68	58
Not to retain report as security for compensation.....	68	58
Pro hac vice, in particular cases, may be appointed by court.....	68	57
In chancery, standing, may be appointed by the court..	68	57
Master's report:		
Return of—exceptions—hearing.....	66	56
Costs on exception to.....	67	57
Not to be recited in decree or order.....	71	59
Material supplemental matter may be set forth in amended pleadings.....	19	31
Materiality of questions not to be decided by examiner.....	51	47
Matter:		
Further and better particulars of, in any pleading may be ordered.....	20	32
New or affirmative, in answer, deemed denied by plaintiff.	31	38
Matters ordinarily determinable at law, when arising in suit in equity, to be disposed of therein.....	23	33
Merits, hearing on—making and directing interlocutory motions, orders, rules, etc., preparatory to.....	1	23
Mesne process:		
Issuing and returning.....	1	23
Subpœna shall constitute proper.....	7	26
To be served by marshal, deputy, etc.....	15	30

	Rule.	Page.
Misjoinder, defense of, how presented.....	29	36
Mistakes, clerical, correction of, in orders and decrees.....	72	59
Money, payment of, final process to execute decree for.....	8	26
Mortgages, foreclosure of, decree for balance due.....	10	28
Motions:		
Interlocutory, making and directing.....	1	23
When may be made.....	1	23
Etc., grantable of course, received and disposed of by clerk.....	2	23
Grantable of course by clerk.....	5	25
For mesne process grantable of course by clerk.....	5	25
And applications not requiring order of court or judge grantable of course by clerk.....	5	25
Grantable of course by clerk may be suspended, etc., by judge.....	5	25
Requiring notice and hearing, times and places for.....	6	25
To enlarge time for filing answer.....	17	31
Will not be granted unless payment of costs, etc.....	17	31
To strike out, to test sufficiency of answer.....	33	39
Motion day.....	6	25
May be dispensed with by senior circuit judge.....	6	26
Motion to dismiss, defenses to be presented in.....	29	36
Names of plaintiff and defendant to be stated in bill.....	25	33
Nominal parties.....	40	42
Non est inventus, return of, issuance of writ of sequestration..	8	27
Nonjoinder, defense of, how presented.....	29	36
Notary public, verification of pleadings before.....	36	40
Notice:		
Reasonable, to parties, of process, commissions, orders, rules, etc.....	1	23
Of orders.....	4	25
Order without prior, to be mailed by clerk to party, etc..	4	25
Of interlocutory orders, etc.....	6	26
Defendant to take, of certain decrees.....	8	27
Of motion to dismiss.....	29	36
Reasonable, of amendment of answer, by leave, etc.....	30	37
Reasonable, of filing supplemental pleading.....	34	39
To be given to parties to be substituted.....	45	44
Reasonable, of motion to enforce answers, etc.....	58	52
Of taking testimony before examiner, etc.....	53	49
To parties or solicitors of proceedings before master.....	60	54
No preliminary injunction granted without.....	73	60
Oath:		
May be made by plaintiff if special relief asked.....	25	34
Stockholder's bill to be verified by.....	27	35
Interrogatories to be signed under.....	58	52
Petition for rehearing to be verified by.....	69	58
Affirmation in lieu of.....	78	64

Objections:	Rule.	Page.
To defect of parties.....	43	43
Tardy, to defect of parties.....	44	43
To evidence taken before examiner, provisions as to.....	51	47
To be noted by examiner, etc.....	51	47
Officers before whom pleadings verified.....	36	40
Old rules abrogated.....	81	65
Omissions:		
In orders and decrees may be corrected without rehearing.....	72	59
Of portions of record on appeal.....	75	62
Correction of, in record on appeal.....	76	63
Orders:		
When may be made.....	1	23
Award of, by judge at chambers, etc.....	1	23
Interlocutory, making and directing.....	1	23
Grantable of course, received and disposed of by clerk...	2	23
Filed with clerk to be noted in equity docket.....	3	24
Of court to be entered in equity journal.....	3	24
Made or passed by clerk, or judge in chambers, to be entered in order book.....	3	24
Made without notice, to be mailed by clerk.....	4	25
Noting of, in equity docket or entered in order book, not notice to parties.....	4	24
Interlocutory, notice of.....	6	26
Process to issue to compel obedience to.....	7	26
Mandatory, for specific performance, provision as to.....	8	27
For delivery of possession, writ of assistance on refusal to obey.....	9	28
In favor of person not party, how enforced.....	11	28
Against person not party, how enforced.....	11	28
That bill be taken pro confesso on default.....	16	30
Shall not recite pleadings.....	71	59
Correction of clerical mistakes in.....	72	59
Temporary restraining, and preliminary injunctions.....	73	73
Justice or judge may make order suspending, etc., injunction pending appeal.....	74	61
Order book:		
Clerk to keep.....	3	24
To contain all orders made or passed by judge in chambers or by clerk.....	3	24
Index of, clerk to keep.....	3	24
Entry of order in, not notice.....	4	24
Papers and orders filed with clerk, etc., to be noted in equity docket.....	3	24
Papers, production of, required by master.....	62	55
Parties:		
Noting or entry of order not notice to.....	4	24
Persons not made.....	25	34
Generally—intervention.....	37	40

## Parties—Continued.

	Rule.	Page.
Joinder of.....	37	40
Proper, absence of persons who would be.....	39	41
Nominal, appearance of.....	40	42
In cases of joint and several demands.....	42	42
Defect of, resisting objection.....	43	43
Defect of, tardy objection, proceedings on.....	44	43
To give notice of taking of testimony before examiner, etc.....	53	49
Clerk to send copies of interrogatories to, if there be no record solicitor.....	58	52
Notice to, of proceedings before master.....	60	54
Failing to appear before master.....	60	54
May be examined on oath by master.....	62	55
Accounting before master, how to bring in accounts.....	63	55
To examine accounting party viva voce or upon inter- rogatory.....	63	56
Time for filing exceptions to master's report by.....	66	57
To verify petition for rehearing by oath.....	69	58
To be given notice of preliminary injunctions, etc.....	73	60
Party:		
When order made in absence of, clerk to mail copy.....	4	25
Heir as, to execute trusts of will.....	41	42
Death of, revivor.....	45	44
Procuring reference to master, payment of costs by.....	59	53
Patent cases, testimony of expert witnesses in.....	48	46
Persons not parties, process on behalf of and against.....	11	28
Person appointed to serve process to make affidavit thereof...	15	30
Persons not made parties to bill.....	25	34
Person, non compos, nothing to be taken against as confessed.	30	37
Persons:		
Joining as parties.....	37	40
Who would be proper parties, absence of.....	39	41
Person making claim before master examinable by him.....	65	56
Petition for rehearing.....	69	58
Plaintiff:		
Entitled to subpoena as of course when bill filed.....	12	29
Time within which to take deposition for.....	47	45
Plea in bar, defenses formerly presentable by, to be made in answer.....	29	36
Pleadings:		
Filing of.....	1	23
Technical forms abrogated.....	18	31
Court may permit any, to be amended.....	19	31
Further and particular statement in, may be required...	20	32
Further and better particulars of matter stated in any, may be ordered.....	20	32
Alteration in, on transfer of action at law erroneously begun as suit in equity.....	22	32
To be signed by solicitors.....	24	33



Pleadings—Continued	Rule.	Page.
When bill may be amended as of course.....	28	35
Demurrers and pleas abolished.....	29	36
Supplemental, permitted when.....	34	39
Officers before whom verified.....	36	40
Filing, or amendment of, on substitution of parties.....	45	44
Pleas abolished.....	29	36
Possession, delivery of, writ of assistance:		
To enforce.....	7	26
On refusal to obey decree for.....	9	28
Powers of master.....	62	55
Practice, additional rules for, by district court.....	79	65
Præcipe, filing indicating portions of record on appeal.....	75	61
Prayer for special relief to be stated in bill.....	25	34
Precedence given to hearing in cases of temporary restraining orders.....	73	60
Prejudice, unless material, will result appellate court not to reverse decree.....	46	45
Preliminary injunctions and temporary restraining orders.....	73	60
Preparation and reduction of record on appeal.....	75	61
Costs—corrections of omissions.....	76	63
Pro confesso:		
Taking bills, motion for, grantable of course by clerk....	5	25
Bill may be taken when answer not filed, etc.....	12	29
Decree—		
On default in answer.....	16	30
To be followed by final decree.....	17	30
Entered if answer not filed.....	29	36
Proceedings before master:		
Speeding of.....	60	54
Powers in.....	62	55
Process:		
Mesne and final, issuing and returning.....	1	23
Award of, by judge at chambers, etc.....	1	23
Issuing and return of.....	1	23
Issued and returns thereon to be noted in equity docket..	3	24
For taking bills pro confesso grantable of course by clerk..	5	25
Mesne or final, to enforce and execute decrees grantable of course by clerk.....	5	25
Mesne and final, defined.....	7	26
In behalf of and against persons not parties.....	11	28
By whom served.....	15	30
Mesne and final to be served by marshal, deputy, etc....	15	30
May be served by person appointed therefor.....	15	30
Court may permit any process to be amended.....	19	31
Additional rules as to, by district court.....	79	65
Prochein ami may sue for infants.....	70	59
Production of books, papers, etc., may be required by master..	62	55
Publication of deposition, when filed.....	55	49

Questions, competency, materiality, or relevancy of, not to be decided by examiner.....	Rule. 51	Page. 47
Record:		
Court may permit any record to be amended.....	19	31
How evidence to be stated in.....	75	62
Appellant's statement as to record on appeal to become part of.....	75	63
On appeal—		
Indicating portions of.....	75	61
Additional portions, how indicated.....	75	61
Reduction and preparation.....	75	61
Difference as to.....	75	63
Reduction and preparation—costs—correction of omissions.....	76	63
Agreed statement.....	77	64
Reduction and preparation of record on appeal.....	75	61
Costs—corrections of omissions.....	76	63
Reference to master—Exceptional, not usual.....	59	53
Rehearing:		
Petition for, provisions as to.....	69	58
Correction of clerical mistakes in orders and decrees without.....	72	59
Reinstatement of causes, continued.....	57	50
Relevancy of questions not to be decided by examiner, etc ..	51	47
Relief:		
Special, prayer for, to be stated in bill.....	25	34
To be verified by oath of plaintiff, etc.....	25	34
Reply:		
When required—when cause at issue.....	31	38
None required unless answer asserts set-off or counter-claim.....	31	38
Report:		
Master's—		
To court.....	60	54
Documents to be identified but not set forth.....	61	54
Of master—		
Exceptions, hearing.....	66	56
Costs on exceptions to.....	67	57
Not to be recited in decree or order.....	71	59
Representatives of class may sue or defend.....	38	41
Residence and citizenship of each party to be stated in bill ..	25	33
Restraining orders, temporary, and preliminary injunctions..	73	60
Returns on process to be entered on equity docket.....	3	24
Return:		
Of subpoena not executed.....	14	29
Of master's report—exceptions—hearing.....	66	56
Revivor:		
Bills of, what necessary in.....	35	39
On death of party.....	45	44

Rights, substantial, court to disregard error or defect in proceedings which does not affect.....	Rule. 19	Page. 31
Rules:		
When they may be awarded.....	1	23
Interlocutory, making and directing.....	1	23
Award of by judge at chambers, etc.....	1	23
Grantable of course, received and disposed of by clerk ...	2	23
Additional, by district court.....	79	65
When effective.....	81	65
Old, abrogated.....	81	65
Sale, amount due above proceeds of decree for.....	10	28
Scandal and impertinence.....	21	32
Scandalous matter, signature of solicitor, certificate that none inserted in pleading.....	24	33
Sequestration, writ of:		
Proper process if defendant not found.....	7	26
Against estate of delinquent.....	8	27
Person other than disobedient party to comply with mandatory order for specific performance.....	8	27
Service of subpoena by delivery of copy, etc.....	13	29
Set-off to be stated in answer.....	30	37
Set-off to be replied to.....	31	38
Signatures, pleadings to be signed by solicitors of record ....	24	33
Solicitors:		
Noting or entry of order not notice to.....	4	24
Of record—		
To sign every pleading.....	24	33
To be furnished copy of amended bill.....	28	36
Clerk to send copies of interrogatories to.....	58	52
Notice to, of proceedings before master.....	60	54
Offending, imposition of costs on.....	76	63
To file præcipe indicating portions of record on appeal...	75	61
Specific performance, by some other person than disobedient party.....	8	27
Standing masters in chancery, courts may appoint.....	68	57
Statement:		
Further and particular in pleading may be required.....	20	32
Agreed as to record on appeal.....	77	64
Stenographer—appointment—fees.....	50	46
Stockholder's bill.....	27	35
Subpcena:		
Shall constitute proper mesne process, etc.....	7	26
Issue of, time for answer.....	12	29
To issue when bill filed and not before.....	12	29
To contain names of parties.....	12	29
When returnable.....	12	29
Memorandum at bottom thereof.....	12	29
Joint, against more than one defendant.....	12	29
Separately, for each defendant when against more than one.	12	29

Subpoena—Continued.	Rule.	Page.
Manner of serving.....	13	29
Not executed, provision as to.....	14	29
Alias.....	14	29
Substitution of proper parties by revivor.....	45	44
Sufficiency of defense, how tested.....	33	39
Suits:		
Papers filed, process issued, etc., to be noted on equity docket.....	3	24
To execute trusts of will—heir as party.....	41	42
By or against incompetents.....	70	58
Supplemental pleading, when may be filed.....	34	39
Supreme Court, if appeal lies to, rehearing not granted after term.....	69	58
Sundays:		
Clerk's office not open.....	2	23
And holidays—computation of time.....	80	65
Temporary restraining orders and preliminary injunctions....	73	60
Term:		
Awarding process, commissions, orders, rules, etc., by judge at chambers, etc., in.....	1	23
Orders, decrees, etc., of court to be entered in equity journal.....	3	24
Rehearing not granted after, if appeal lies.....	69	58
Testimony:		
Usually to be taken in open court at trial.....	46	44
Of expert witnesses in patent and trade-mark cases.....	48	46
May be taken down by stenographer.....	50	47
To be signed by witness.....	51	47
Of witnesses before examiner to be read to him.....	51	47
Contempt of court for refusal of witness to give testimony before commissioner, examiner, etc.....	52	48
Notice of taking, before master or examiner.....	53	49
No further, by deposition to be taken after case goes on trial calendar, except, etc.....	56	50
How stated in record on appeal.....	75	62
Testing sufficiency of defense.....	33	39
Time:		
Enlargement of—		
For full compliance with decree.....	8	27
To file answer.....	16	30
On expiration of, for depositions, case on trial calendar...	56	50
Computation of—Sundays and holidays.....	80	65
Trade-mark cases, testimony of expert witnesses in.....	48	46
Transcript:		
Cost of, to be advanced by party ordering.....	50	47
Of evidence before examiner not to include argument...	51	47
On appeal—		
Indicating portions of.....	75	61
Supplemental, correction of, omissions by.....	76	64

	Rule.	Page.
Transfer of action at law erroneously begun as suit in equity..	22	32
<b>Trial:</b>		
Testimony usually taken in open court, rulings on objections to evidence.....	46	44
Calendar, on expiration of time for depositions case goes on.....	56	50
Trials, separate—court may order separate trials of joint actions.....	26	35
Trustee as party.....	37	40
Vacation, awarding process, commissions, orders, rules, etc., by judge at chambers in.....	1	23
Value, averments in bill other than of, if not denied, deemed confessed.....	30	37
<b>Verification:</b>		
Bill to be verified by oath if special relief asked.....	25	34
Of pleadings, officers before whom taken.....	36	40
Petition for rehearing to be verified by oath, etc.....	69	58
Viva voce, master may examine persons before him.....	65	56
Vouchers, production of, required by master.....	42	55
Will, execution of trusts of—heir as party.....	41	42
<b>Witnesses:</b>		
Testimony usually to be taken in open court.....	46	44
Depositions of, may be taken when.....	47	45
Testimony of expert in patent and trade-mark cases.....	48	46
Before examiners, etc., cross-examination of, etc.....	49	46
Testimony of—		
To be read to.....	51	47
To be signed by.....	51	47
Refusing to sign testimony.....	51	47
Expense of taking deposition of, to be advanced by party calling.....	50	47
Attendance of, before commissioner, etc.....	52	48
Refusing to appear before commissioner, master, or examiner.....	52	48
Compensation of, for attendance before commissioner, master, or examiner.....	52	48
May be examined orally before court, or cross-examined before examiner, etc., when no notice of deposition given.....	54	49
Testimony of, by deposition, after case goes on trial calendar.....	56	50
May be examined on oath by master.....	62	55
Testimony of, how stated in record, on appeal.....	75	62
Writing, call for admission of execution of genuineness of....	58	53
Writings, production of, required by master.....	62	55



# RULES OF PRACTICE FOR THE COURTS OF EQUITY OF THE UNITED STATES.

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## **Rule 1.**

DISTRICT COURT ALWAYS OPEN FOR CERTAIN PURPOSES—ORDERS AT CHAMBERS.

The district courts, as courts of equity, shall be deemed always open for the purpose of filing any pleading, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, rules, and other proceedings preparatory to the hearing, upon their merits, of all causes pending therein.

Any district judge may, upon reasonable notice to the parties, make, direct, and award, at chambers or in the clerk's office, and in vacation as well as in term, all such process, commissions, orders, rules, and other proceedings, whenever the same are not grantable of course, according to the rules and practice of the court.

## **Rule 2.**

CLERK'S OFFICE ALWAYS OPEN, EXCEPT, ETC.

The clerk's office shall be open during business hours on all days, except Sundays and legal holidays, and the clerk shall be in attendance for the

purpose of receiving and disposing of all motions, rules, orders, and other proceedings which are grantable of course.

**Rule 3.**

**BOOKS KEPT BY CLERK AND ENTRIES THEREIN.**

The clerk shall keep a book known as "equity docket," in which he shall enter each suit, with a file number corresponding to the folio in the book. All papers and orders filed with the clerk in the suit, all process issued and returns made thereon, and all appearances shall be noted briefly and chronologically in this book on the folio assigned to the suit and shall be marked with its file number.

The clerk shall also keep a book entitled "order book," in which shall be entered at length, in the order of their making, all orders made or passed by him as of course and also all orders made or passed by the judge in chambers.

He shall also keep an "equity journal," in which shall be entered all orders, decrees, and proceedings of the court in equity causes in term time.

Separate and suitable indices of the equity docket, order book, and equity journal shall be kept by the clerk, under the direction of court.

**Rule 4.**

**NOTICE OF ORDERS.**

Neither the noting of an order in the equity docket nor its entry in the order book shall of



itself be deemed notice to the parties or their solicitors; and when an order is made without prior notice to, and in the absence of, a party, the clerk, unless otherwise directed by the court or judge, shall forthwith send a copy thereof, by mail, to such party or his solicitor, and a note of such mailing shall be made in the equity docket, which shall be taken as sufficient proof of due notice of the order.

**Rule 5.**

**MOTIONS GRANTABLE OF COURSE BY CLERK.**

All motions and applications in the clerk's office for the issuing of mesne process or final process to enforce and execute decrees, for taking bills pro confesso, and for other proceedings in the clerk's office which do not require any allowance or order of the court or of a judge shall be deemed motions and applications grantable of course by the clerk; but the same may be suspended, or altered, or rescinded by the judge upon special cause shown.

**Rule 6.**

**MOTION DAY.**

Each district court shall establish regular times and places, not less than once each month, when motions requiring notice and hearing may be made and disposed of; but the judge may at any time and place, and on such notice, if any, as he

may consider reasonable, make and direct all interlocutory orders, rulings, and proceedings for the advancement, conduct, and hearing of causes. If the public interest permits, the senior circuit judge of the circuit may dispense with the motion day during not to exceed two months in the year in any district.

**Rule 7.**

**PROCESS, MESNE AND FINAL.**

The process of subpoena shall constitute the proper mesne process in all suits in equity, in the first instance, to require the defendant to appear and answer the bill; and unless otherwise provided in these rules or specially ordered by the court a writ of attachment and, if the defendant can not be found, a writ of sequestration or a writ of assistance to enforce a delivery of possession, as the case may require, shall be the proper process to issue for the purpose of compelling obedience to any interlocutory or final order or decree of the court.

**Rule 8.**

**ENFORCEMENT OF FINAL DECREES.**

Final process to execute any decree may, if the decree be solely for the payment of money, be by a writ of execution, in the form used in the district court in suits at common law in actions of assumpsit. If the decree be for the performance

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of any specific act, as, for example, for the execution of a conveyance of land or the delivering up of deeds or other documents, the decree shall in all cases prescribe the time within which the act shall be done, of which the defendant shall be bound, without further service, to take notice; and upon affidavit of the plaintiff, filed in the clerk's office, that the same has not been complied with within the prescribed time, the clerk shall issue a writ of attachment against the delinquent party, from which, if attached thereon, he shall not be discharged, unless upon a full compliance with the decree and the payment of all costs, or upon a special order of the court, or a judge thereof, upon motion and affidavit, enlarging the time for the performance thereof. If the delinquent party can not be found, a writ of sequestration shall issue against his estate, upon the return of non est inventus, to compel obedience to the decree. If a mandatory order, injunction, or decree for the specific performance of any act or contract be not complied with, the court or a judge, besides, or instead of, proceeding against the disobedient party for a contempt or by sequestration, may by order direct that the act required to be done be done, so far as practicable, by some other person appointed by the court or judge, at the cost of the disobedient party, and the act, when so done, shall have like effect as if done by him.

**Rule 9.****WRIT OF ASSISTANCE.**

When any decree or order is for the delivery of possession, upon proof made by affidavit of a demand and refusal to obey the decree or order, the party prosecuting the same shall be entitled to a writ of assistance from the clerk of the court.

**Rule 10.****DECREE FOR DEFICIENCY IN FORECLOSURES, ETC.**

In suits for the foreclosure of mortgages, or the enforcement of other liens, a decree may be rendered for any balance that may be found due to the plaintiff over and above the proceeds of the sale or sales, and execution may issue for the collection of the same, as is provided in Rule 8 when the decree is solely for the payment of money.

**Rule 11.****PROCESS IN BEHALF OF AND AGAINST PERSONS NOT PARTIES.**

Every person, not being a party in any cause, who has obtained an order, or in whose favor an order shall have been made, may enforce obedience to such order by the same process as if he were a party; and every person, not being a party, against whom obedience to any order of the court may be enforced, shall be liable to the same process for enforcing obedience to such orders as if he were a party.

**Rule 12.****ISSUE OF SUBPŒNA—TIME FOR ANSWER.**

Whenever a bill is filed, and not before, the clerk shall issue the process of subpœna thereon, as of course, upon the application of the plaintiff, which shall contain the names of the parties and be returnable into the clerk's office 20 days from the issuing thereof. At the bottom of the subpœna shall be placed a memorandum, that the defendant is required to file his answer or other defense in the clerk's office on or before the twentieth day after service, excluding the day thereof; otherwise the bill may be taken pro confesso. Where there are more than one defendant, a writ of subpœna may, at the election of the plaintiff, be sued out separately for each defendant, or a joint subpœna against all the defendants.

**Rule 13.****MANNER OF SERVING SUBPŒNA.**

The service of all subpœnas shall be by delivering a copy thereof to the defendant personally, or by leaving a copy thereof at the dwelling house or usual place of abode of each defendant, with some adult person who is a member of or resident in the family.

**Rule 14.****ALIAS SUBPŒNA.**

Whenever any subpœna shall be returned not executed as to any defendant, the plaintiff shall

be entitled to other subpoenas against such defendant until due service is made.

**Rule 15.**

**PROCESS, BY WHOM SERVED.**

The service of all process, mesne and final, shall be by the marshal of the district, or his deputy, or by some other person specially appointed by the court or judge for that purpose, and not otherwise. In the latter case the person serving the process shall make affidavit thereof.

**Rule 16.**

**DEFENDANT TO ANSWER—DEFAULT—DECREE PRO CONFESSO.**

It shall be the duty of the defendant, unless the time shall be enlarged, for cause shown, by a judge of the court, to file his answer or other defense to the bill in the clerk's office within the time named in the subpoena as required by Rule 12. In default thereof the plaintiff may, at his election, take an order as of course that the bill be taken pro confesso, and thereupon the cause shall be proceeded in ex parte.

**Rule 17.**

**DECREE PRO CONFESSO TO BE FOLLOWED BY FINAL DECREE—SETTING ASIDE DEFAULT.**

When the bill is taken pro confesso, the court may proceed to a final decree at any time after

the expiration of 30 days after the entry of the order pro confesso, and such decree shall be deemed absolute, unless the court shall at the same term set aside the same, or enlarge the time for filing the answer, upon cause shown upon motion and affidavit. No such motion shall be granted, unless upon the payment of the costs of the plaintiff up to that time, or such part thereof as the court shall deem reasonable, and unless the defendant shall undertake to file his answer within such time as the court shall direct and submit to such other terms as the court shall direct for the purpose of speeding the cause.

**Rule 18.**

**PLEADINGS—TECHNICAL FORMS ABROGATED.**

Unless otherwise prescribed by statute or these rules, the technical forms of pleadings in equity are abolished.

**Rule 19.**

**AMENDMENTS GENERALLY.**

The court may at any time, in furtherance of justice, upon such terms as may be just, permit any process, proceeding, pleading, or record to be amended, or material supplemental matter to be set forth in an amended or supplemental pleading. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

**Rule 20.****FURTHER AND PARTICULAR STATEMENT IN PLEADING  
MAY BE REQUIRED.**

A further and better statement of the nature of the claim or defense, or further and better particulars of any matter stated in any pleading, may in any case be ordered upon such terms as to costs and otherwise as may be just.

**Rule 21.****SCANDAL AND IMPERTINENCE.**

The right to except to bills, answers, and other proceedings for scandal or impertinence shall not obtain, but the court may, upon motion or its own initiative, order any redundant, impertinent, or scandalous matter stricken out upon such terms as the court shall think fit.

**Rule 22.****ACTION AT LAW ERRONEOUSLY BEGUN AS SUIT IN  
EQUITY—TRANSFER.**

If at any time it appear that a suit commenced in equity should have been brought as an action on the law side of the court, it shall be forthwith transferred to the law side and be there proceeded with, with only such alteration in the pleadings as shall be essential.



**Rule 23.**

MATTERS ORDINARILY DETERMINABLE AT LAW WHEN ARISING IN SUIT IN EQUITY TO BE DISPOSED OF THEREIN.

If in a suit in equity a matter ordinarily determinable at law arises, such matter shall be determined in that suit according to the principles applicable, without sending the case or question to the law side of the court.

**Rule 24.**

SIGNATURE OF COUNSEL.

Every bill or other pleading shall be signed individually by one or more solicitors of record, and such signatures shall be considered as a certificate by each solicitor that he has read the pleading so signed by him; that upon the instructions laid before him regarding the case there is good ground for the same; that no scandalous matter is inserted in the pleading; and that it is not interposed for delay.

**Rule 25.**

BILL OF COMPLAINT—CONTENTS.

Hereafter it shall be sufficient that a bill in equity shall contain, in addition to the usual caption:

First, the full name, when known, of each plaintiff and defendant, and the citizenship and residence of each party. If any party be under any disability that fact shall be stated.

Second, a short and plain statement of the grounds upon which the court's jurisdiction depends.

Third, a short and simple statement of the ultimate facts upon which the plaintiff asks relief, omitting any mere statement of evidence.

Fourth, if there are persons other than those named as defendants who appear to be proper parties, the bill should state why they are not made parties—as that they are not within the jurisdiction of the court or can not be made parties without ousting the jurisdiction.

Fifth, a statement of and prayer for any special relief pending the suit or on final hearing, which may be stated and sought in alternative forms. If special relief pending the suit be desired the bill should be verified by the oath of the plaintiff or some one having knowledge of the facts upon which such relief is asked.

#### **Rule 26.**

#### **JOINDER OF CAUSES OF ACTION.**

The plaintiff may join in one bill as many causes of action, cognizable in equity, as he may have against the defendant. But when there are more than one plaintiff, the causes of action joined must be joint, and if there be more than one defendant the liability must be one asserted against all of the material defendants, or sufficient grounds must appear for uniting the causes of action in order

to promote the convenient administration of justice. If it appear that any such causes of action can not be conveniently disposed of together, the court may order separate trials.

**Rule 27.**

**STOCKHOLDER'S BILL.**

Every bill brought by one or more stockholders in a corporation against the corporation and other parties, founded on rights which may properly be asserted by the corporation, must be verified by oath, and must contain an allegation that the plaintiff was a shareholder at the time of the transaction of which he complains, or that his share had devolved on him since by operation of law, and that the suit is not a collusive one to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance. It must also set forth with particularity the efforts of the plaintiff to secure such action as he desires on the part of the managing directors or trustees and, if necessary, of the shareholders, and the causes of his failure to obtain such action or the reasons for not making such effort.

**Rule 28.**

**AMENDMENT OF BILL AS OF COURSE.**

The plaintiff may, as of course, amend his bill before the defendant has responded thereto, but if such amendment be filed after any copy has is-

sued from the clerk's office, the plaintiff at his own cost shall furnish to the solicitor of record of each opposing party a copy of the bill as amended, unless otherwise ordered by the court or judge.

After pleading filed by any defendant, plaintiff may amend only by consent of the defendant or leave of the court or judge.

**Rule 29.**

**DEFENSES—HOW PRESENTED.**

Demurrers and pleas are abolished. Every defense in point of law arising upon the face of the bill, whether for misjoinder, nonjoinder, or insufficiency of fact to constitute a valid cause of action in equity, which might heretofore have been made by demurrer or plea, shall be made by motion to dismiss or in the answer; and every such point of law going to the whole or a material part of the cause or causes of action stated in the bill may be called up and disposed of before final hearing at the discretion of the court. Every defense heretofore presentable by plea in bar or abatement shall be made in the answer and may be separately heard and disposed of before the trial of the principal case in the discretion of the court. If the defendant move to dismiss the bill or any part thereof, the motion may be set down for hearing by either party upon five days' notice, and, if it be denied, answer shall be filed within five days thereafter or a decree pro confesso entered.

## Rule 30.

## ANSWER—CONTENTS—COUNTERCLAIM.

The defendant in his answer shall in short and simple terms set out his defense to each claim asserted by the bill, omitting any mere statement of evidence and avoiding any general denial of the averments of the bill, but specifically admitting or denying or explaining the facts upon which the plaintiff relies, unless the defendant is without knowledge, in which case he shall so state, such statement operating as a denial. Averments other than of value or amount of damage, if not denied, shall be deemed confessed, except as against an infant, lunatic, or other person non compos and not under guardianship, but the answer may be amended, by leave of the court or judge, upon reasonable notice, so as to put any averment in issue, when justice requires it. The answer may state as many defenses, in the alternative, regardless of consistency, as the defendant deems essential to his defense.

The answer must state in short and simple form any counterclaim arising out of the transaction which is the subject matter of the suit, and may, without cross bill, set out any set-off or counterclaim against the plaintiff which might be the subject of an independent suit in equity against him, and such set-off or counterclaim so set up shall have the same effect as a cross suit, so as to enable

the court to pronounce a final judgment in the same suit both on the original and cross claims.

**Rule 31.**

**REPLY—WHEN REQUIRED—WHEN CAUSE AT ISSUE.**

Unless the answer assert a set-off or counterclaim, no reply shall be required without special order of the court or judge, but the cause shall be deemed at issue upon the filing of the answer, and any new or affirmative matter therein shall be deemed to be denied by the plaintiff. If the answer include a set-off or counterclaim the party against whom it is asserted shall reply within 10 days after the filing of the answer, unless a longer time be allowed by the court or judge. If the counterclaim is one which affects the rights of other defendants they or their solicitors shall be served with a copy of the same within 10 days from the filing thereof, and 10 days shall be accorded to such defendants for filing a reply. In default of a reply, a decree pro confesso on the counterclaim may be entered as in default of an answer to the bill.

**Rule 32.**

**ANSWER TO AMENDED BILL.**

In every case where an amendment to the bill shall be made after answer filed, the defendant shall put in a new or supplemental answer within 10 days after that on which the amendment or

amended bill is filed, unless the time is enlarged or it is otherwise ordered by a judge of the court; and upon a default, the like proceedings may be had as upon an omission to put in an answer.

**Rule 33.**

**TESTING SUFFICIENCY OF DEFENSE.**

Exceptions for insufficiency of an answer are abolished. But if an answer set up an affirmative defense, set-off, or counterclaim, the plaintiff may, upon five days' notice, or such further time as the court may allow, test the sufficiency of the same by motion to strike out. If found insufficient but amendable the court may allow an amendment upon terms, or strike out the matter.

**Rule 34.**

**SUPPLEMENTAL PLEADING.**

Upon application of either party the court or judge may, upon reasonable notice and such terms as are just, permit him to file and serve a supplemental pleading, alleging material facts occurring after his former pleading, or of which he was ignorant when it was made, including the judgment or decree of a competent court rendered after the commencement of the suit determining the matters in controversy or a part thereof.

**Rule 35.**

**BILLS OF REVIVOR AND SUPPLEMENTAL BILLS—FORM.**

It shall not be necessary in any bill of revivor or supplemental bill to set forth any of the state-

ments in the original suit, unless the special circumstances of the case may require it.

**Rule 36.**

**OFFICERS BEFORE WHOM PLEADINGS VERIFIED.**

Every pleading which is required to be sworn to by statute, or these rules, may be verified before any justice or judge of any court of the United States, or of any State or Territory, or of the District of Columbia, or any clerk of any court of the United States, or of any Territory, or of the District of Columbia, or any notary public.

**Rule 37.**

**PARTIES GENERALLY—INTERVENTION.**

Every action shall be prosecuted in the name of the real party in interest, but an executor, administrator, guardian, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party expressly authorized by statute, may sue in his own name without joining with him the party for whose benefit the action is brought. All persons having an interest in the subject of the action and in obtaining the relief demanded may join as plaintiffs, and any person may be made a defendant who has or claims an interest adverse to the plaintiff. Any person may at any time be made a party if his presence is necessary or proper to a complete determination of the cause. Persons



having a united interest must be joined on the same side as plaintiffs or defendants, but when anyone refuses to join he may for such reason be made a defendant.

Anyone claiming an interest in the litigation may at any time be permitted to assert his right by intervention, but the intervention shall be in subordination to, and in recognition of, the propriety of the main proceeding.

**Rule 38.**

**REPRESENTATIVES OF CLASS.**

When the question is one of common or general interest to many persons constituting a class so numerous as to make it impracticable to bring them all before the court, one or more may sue or defend for the whole.

**Rule 39.**

**ABSENCE OF PERSONS WHO WOULD BE PROPER PARTIES.**

In all cases where it shall appear to the court that persons, who might otherwise be deemed proper parties to the suit, can not be made parties by reason of their being out of the jurisdiction of the court, or incapable otherwise of being made parties, or because their joinder would oust the jurisdiction of the court as to the parties before the court, the court may, in its discretion, proceed in the cause without making such persons parties; and in such cases the decree shall be without prejudice to the rights of the absent parties.

**Rule 40.****NOMINAL PARTIES.**

Where no account, payment, conveyance, or other direct relief is sought against a party to a suit, not being an infant, the party, upon service of the subpoena upon him, need not appear and answer the bill unless the plaintiff specially requires him to do so by the prayer; but he may appear and answer at his option; and if he does not appear and answer he shall be bound by all the proceedings in the cause. If the plaintiff shall require him to appear and answer he shall be entitled to the costs of all the proceedings against him unless the court shall otherwise direct.

**Rule 41.****SUIT TO EXECUTE TRUSTS OF WILL—HEIR AS PARTY.**

In suits to execute the trusts of a will it shall not be necessary to make the heir at law a party; but the plaintiff shall be at liberty to make the heir at law a party where he desires to have the will established against him.

**Rule 42.****JOINT AND SEVERAL DEMANDS.**

In all cases in which the plaintiff has a joint and several demand against several persons, either as principals or sureties, it shall not be necessary to bring before the court as parties to a suit con-

cerning such demand all the persons liable thereto; but the plaintiff may proceed against one or more of the persons severally liable.

**Rule 43.**

**DEFECT OF PARTIES—RESISTING OBJECTION.**

Where the defendant shall by his answer suggest that the bill of complaint is defective for want of parties, the plaintiff may, within 14 days after answer filed, set down the cause for argument as a motion upon that objection only; and where the plaintiff shall not so set down his cause, but shall proceed therewith to a hearing, notwithstanding an objection for want of parties taken by the answer, he shall not at the hearing of the cause, if the defendant's objection shall then be allowed, be entitled as of course to an order to amend his bill by adding parties; but the court shall be at liberty to dismiss the bill or to allow an amendment on such terms as justice may require.

**Rule 44.**

**DEFECT OF PARTIES—TARDY OBJECTION.**

If a defendant shall, at the hearing of a cause, object that a suit is defective for want of parties, not having by motion or answer taken the objection and therein specified by name or description the parties to whom the objection applies, the court shall be at liberty to make a decree saving the rights of the absent parties.

**Rule 45.****DEATH OF PARTY—REVIVOR.**

In the event of the death of either party the court may, in a proper case, upon motion, order the suit to be revived by the substitution of the proper parties. If the successors or representatives of the deceased party fail to make such application within a reasonable time, then any other party may, on motion, apply for such relief, and the court, upon any such motion, may make the necessary orders for notice to the parties to be substituted and for the filing of such pleadings or amendments as may be necessary.

**Rule 46.****TRIAL—TESTIMONY USUALLY TAKEN IN OPEN COURT—  
RULINGS ON OBJECTIONS TO EVIDENCE.**

In all trials in equity the testimony of witnesses shall be taken orally in open court, except as otherwise provided by statute or these rules. The court shall pass upon the admissibility of all evidence offered as in actions at law. When evidence is offered and excluded, and the party against whom the ruling is made excepts thereto at the time, the court shall take and report so much thereof, or make such a statement respecting it, as will clearly show the character of the evidence, the form in which it was offered, the objection made, the ruling, and the exception. If the appellate court shall be of opinion that the evidence should have been admitted, it shall not reverse

the decree unless it be clearly of opinion that material prejudice will result from an affirmance, in which event it shall direct such further steps as justice may require.

**Rule 47.**

**DEPOSITIONS—TO BE TAKEN IN EXCEPTIONAL INSTANCES.**

The court, upon application of either party, when allowed by statute, or for good and exceptional cause for departing from the general rule, to be shown by affidavit, may permit the deposition of named witnesses, to be used before the court or upon a reference to a master, to be taken before an examiner or other named officer, upon the notice and terms specified in the order. All depositions taken under a statute, or under any such order of the court, shall be taken and filed as follows, unless otherwise ordered by the court or judge for good cause shown: Those of the plaintiff within 60 days from the time the cause is at issue; those of the defendant within 30 days from the expiration of the time for the filing of plaintiff's depositions; and rebutting depositions by either party within 20 days after the time for taking original depositions expires.

**Rule 48.**

**TESTIMONY OF EXPERT WITNESSES IN PATENT AND TRADE-MARK CASES.**

In a case involving the validity or scope of a patent or trade-mark, the district court may, upon

petition, order that the testimony in chief of expert witnesses, whose testimony is directed to matters of opinion, be set forth in affidavits and filed as follows: Those of the plaintiff within 40 days after the cause is at issue; those of the defendant within 20 days after plaintiff's time has expired; and rebutting affidavits within 15 days after the expiration of the time for filing original affidavits. Should the opposite party desire the production of any affiant for cross-examination, the court or judge shall, on motion, direct that said cross-examination and any reexamination take place before the court upon the trial; and unless the affiant is produced and submits to cross-examination in compliance with such direction, his affidavit shall not be used as evidence in the cause.

**Rule 49.**

**EVIDENCE TAKEN BEFORE EXAMINERS, ETC.**

All evidence offered before an examiner or like officer, together with any objections, shall be saved and returned into the court. Depositions, whether upon oral examination before an examiner or like officer or otherwise, shall be taken upon questions and answers reduced to writing or in the form of narrative, and the witness shall be subject to cross-examination and reexamination.

**Rule 50.**

**STENOGRAPHER—APPOINTMENT—FEES.**

When deemed necessary by the court or officer taking testimony, a stenographer may be appointed

who shall take down testimony in shorthand and, if required, transcribe the same. His fee shall be fixed by the court and taxed ultimately as costs. The expense of taking a deposition, or the cost of a transcript, shall be advanced by the party calling the witness or ordering the transcript.

**Rule 51.**

**EVIDENCE TAKEN BEFORE EXAMINERS, ETC.**

Objections to the evidence, before an examiner or like officer, shall be in short form, stating the grounds of objection relied upon, but no transcript filed by such officer shall include argument or debate. The testimony of each witness, after being reduced to writing, shall be read over to or by him, and shall be signed by him in the presence of the officer; provided, that if the witness shall refuse to sign his deposition so taken, the officer shall sign the same, stating upon the record the reasons, if any, assigned by the witness for such refusal. Objection to any question or questions shall be noted by the officer upon the deposition, but he shall not have power to decide on the competency or materiality or relevancy of the questions. The court shall have power, and it shall be its duty, to deal with the costs of incompetent and immaterial or irrelevant depositions, or parts of them, as may be just.

**Rule 52.****ATTENDANCE OF WITNESSES BEFORE COMMISSIONER,  
MASTER; OR EXAMINER.**

Witnesses who live within the district, and whose testimony may be taken out of court by these rules, may be summoned to appear before a commissioner appointed to take testimony, or before a master or examiner appointed in any cause by subpoena in the usual form, which may be issued by the clerk in blank and filled up by the party praying the same, or by the commissioner, master, or examiner, requiring the attendance of the witnesses at the time and place specified, who shall be allowed for attendance the same compensation as for attendance in court, and if any witness shall refuse to appear or give evidence it shall be deemed a contempt of the court, which being certified to the clerk's office by the commissioner, master, or examiner, an attachment may issue thereupon by order of the court or of any judge thereof, in the same manner as if the contempt were for not attending, or for refusing to give testimony in, the court.

In case of refusal of witnesses to attend or be sworn or to answer any question put by the commissioner, master, or examiner, or by counsel or solicitor the same practice shall be adopted as is now practiced with respect to witnesses to be produced on examination before an examiner of said court on written interrogatories.



**Rule 53.****NOTICE OF TAKING TESTIMONY BEFORE EXAMINER, ETC.**

Notice shall be given by the respective counsel or parties to the opposite counsel or parties of the time and place of examination before an examiner or like officer for such reasonable time as the court or officer may fix by order in each case.

**Rule 54.****DEPOSITIONS UNDER REVISED STATUTES, SECTIONS 863, 865, 866, 867—CROSS-EXAMINATION.**

After a cause is at issue depositions may be taken as provided by sections 863, 865, 866, and 867, Revised Statutes. But if in any case no notice has been given the opposite party of the time and place of taking the deposition, he shall, upon application and notice, be entitled to have the witness examined orally before the court, or to a cross-examination before an examiner or like officer, or a new deposition taken with notice, as the court or judge under all the circumstances shall order.

**Rule 55.****DEPOSITION DEEMED PUBLISHED WHEN FILED.**

Upon the filing of any deposition or affidavit taken under these rules or any statute, it shall be deemed published unless otherwise ordered by the court.

**Rule 56.****ON EXPIRATION OF TIME FOR DEPOSITIONS, CASE GOES  
ON TRIAL CALENDAR.**

After the time has elapsed for taking and filing depositions under these rules, the case shall be placed on the trial calendar. Thereafter no further testimony by deposition shall be taken except for some strong reason shown by affidavit. In every such application the reason why the testimony of the witness can not be had orally on the trial, and why his deposition has not been before taken shall be set forth, together with the testimony which it is expected the witness will give.

**Rule 57.****CONTINUANCES.**

After a cause shall be placed on the trial calendar it may be passed over to another day of the same term by consent of counsel or order of the court, but shall not be continued beyond the term save in exceptional cases by order of the court upon good cause shown by affidavit and upon such terms as the court shall in its discretion impose. Continuances beyond the term by consent of the parties shall be allowed on condition only that a stipulation be signed by counsel for all the parties and that all costs incurred theretofore be paid. Thereupon an order shall be entered dropping the case from the trial calendar, subject to reinstatement within one year upon application to the court

by either party, in which event it shall be heard at the earliest convenient day. If not so reinstated within the year, the suit shall be dismissed without prejudice to a new one.

**Rule 58.**

DISCOVERY—INTERROGATORIES—INSPECTION AND PRODUCTION OF DOCUMENTS—ADMISSION OF EXECUTION OR GENUINENESS.

The plaintiff at any time after filing the bill and not later than 21 days after the joinder of issue, and the defendant at any time after filing his answer and not later than 21 days after the joinder of issue, and either party at any time thereafter by leave of the court or judge, may file interrogatories in writing for the discovery by the opposite party or parties of facts and documents material to the support or defense of the cause, with a note at the foot thereof stating which of the interrogatories each of the parties is required to answer. But no party shall file more than one set of interrogatories to the same party without leave of the court or judge.

If any party to the cause is a public or private corporation, any opposite party may apply to the court or judge for an order allowing him to file interrogatories to be answered by any officer of the corporation, and an order may be made accordingly for the examination of such officer as may appear to be proper upon such interrogatories as the court or judge shall think fit.

Copies shall be filed for the use of the interrogated party and shall be sent by the clerk to the respective solicitors of record, or to the last known address of the opposite party if there be no record solicitor.

Interrogatories shall be answered and the answers filed in the clerk's office within 15 days after they have been served, unless the time be enlarged by the court or judge. Each interrogatory shall be answered separately and fully and the answers shall be in writing, under oath, and signed by the party or corporate officer interrogated. Within 10 days after the service of interrogatories, objections to them, or any of them, may be presented to the court or judge, with proof of notice of the purpose so to do, and answers shall be deferred until the objections are determined, which shall be at as early a time as is practicable. In so far as the objections are sustained, answers shall not be required.

The court or judge, upon motion and reasonable notice, may make all such orders as may be appropriate to enforce answers to interrogatories or to effect the inspection or production of documents in the possession of either party and containing evidence material to the cause of action or defense of his adversary. Any party failing or refusing to comply with such an order shall be liable to attachment, and shall also be liable, if a plaintiff, to have his bill dismissed, and, if a defendant, to

have his answer stricken out and be placed in the same situation as if he had failed to answer.

By a demand served 10 days before the trial, either party may call on the other to admit in writing the execution or genuineness of any document, letter, or other writing, saving all just exceptions; and if such admission be not made within five days after such service, the costs of proving the document, letter, or writing shall be paid by the party refusing or neglecting to make such admission, unless at the trial the court shall find that the refusal or neglect was reasonable.

**Rule 59.**

**REFERENCE TO MASTER—EXCEPTIONAL, NOT USUAL.**

Save in matters of account, a reference to a master shall be the exception, not the rule, and shall be made only upon a showing that some exceptional condition requires it. When such a reference is made, the party at whose instance or for whose benefit it is made shall cause the order of reference to be presented to the master for a hearing within 20 days succeeding the time when the reference was made, unless a longer time be specially granted by the court or judge; if he shall omit to do so, the adverse party shall be at liberty forthwith to cause proceedings to be had before the master, at the costs of the party procuring the reference.

**Rule 60.****PROCEEDINGS BEFORE MASTER.**

Upon every such reference, it shall be the duty of the master, as soon as he reasonably can after the same is brought before him, to assign a time and place for proceedings in the same, and to give due notice thereof to each of the parties, or their solicitors; and if either party shall fail to appear at the time and place appointed, the master shall be at liberty to proceed *ex parte*, or, in his discretion, to adjourn the examination and proceedings to a future day, giving notice to the absent party or his solicitor of such adjournment; and it shall be the duty of the master to proceed with all reasonable diligence in every such reference, and with the least practicable delay, and either party shall be at liberty to apply to the court, or a judge thereof, for an order to the master to speed the proceedings and to make his report, and to certify to the court or judge the reason for any delay.

**Rule 61.****MASTER'S REPORT—DOCUMENTS IDENTIFIED BUT NOT SET FORTH.**

In the reports made by the master to the court, no part of any state of facts, account, charge, affidavit, deposition, examination, or answer brought in or used before him shall be stated or recited. But such state of facts, account, charge, affidavit,

deposition, examination, or answer shall be identified and referred to, so as to inform the court what state of facts, account, charge, affidavit, deposition, examination, or answer were so brought in or used.

**Rule 62.**

**POWERS OF MASTER.**

The master shall regulate all the proceedings in every hearing before him, upon every reference; and he shall have full authority to examine the parties in the cause, upon oath, touching all matters contained in the reference; and also to require the production of all books, papers, writings, vouchers, and other documents applicable thereto; and also to examine on oath, viva voce, all witnesses produced by the parties before him, or by deposition, according to the acts of Congress, or otherwise, as here provided; and also to direct the mode in which the matters requiring evidence shall be proved before him; and generally to do all other acts, and direct all other inquiries and proceedings in the matters before him, which he may deem necessary and proper to the justice and merits thereof and the rights of the parties.

**Rule 63.**

**FORM OF ACCOUNTS BEFORE MASTER.**

All parties accounting before a master shall bring in their respective accounts in the form of debtor and creditor; and any of the other parties

who shall not be satisfied with the account so brought in shall be at liberty to examine the accounting party viva voce, or upon interrogatories, as the master shall direct.

**Rule 64.**

**FORMER DEPOSITIONS, ETC., MAY BE USED BEFORE MASTER.**

All affidavits, depositions, and documents which have been previously made, read, or used in the court upon any proceeding in any cause or matter may be used before the master.

**Rule 65.**

**CLAIMANTS BEFORE MASTER EXAMINABLE BY HIM.**

The master shall be at liberty to examine any creditor or other person coming in to claim before him, either upon written interrogatories or viva voce, or in both modes, as the nature of the case may appear to him to require. The evidence upon such examinations shall be taken down by the master, or by some other person by his order and in his presence, if either party requires it, in order that the same may be used by the court if necessary.

**Rule 66.**

**RETURN OF MASTER'S REPORT—EXCEPTIONS—  
HEARING.**

The master, as soon as his report is ready, shall return the same into the clerk's office, and the day



of the return shall be entered by the clerk in the equity docket. The parties shall have 20 days from the time of the filing of the report to file exceptions thereto, and if no exceptions are within that period filed by either party, the report shall stand confirmed. If exceptions are filed, they shall stand for hearing before the court, if then in session, or, if not, at the next sitting held thereafter, by adjournment or otherwise.

**Rule 67.**

**COSTS ON EXCEPTIONS TO MASTER'S REPORT.**

In order to prevent exceptions to reports from being filed for frivolous causes, or for mere delay, the party whose exceptions are overruled shall, for every exception overruled, pay \$5 costs to the other party, and for every exception allowed shall be entitled to the same costs.

**Rule 68.**

**APPOINTMENT AND COMPENSATION OF MASTERS.**

The district courts may appoint standing masters in chancery in their respective districts (a majority of all the judges thereof concurring in the appointment), and they may also appoint a master pro hac vice in any particular case. The compensation to be allowed to every master shall be fixed by the district court, in its discretion, having regard to all the circumstances thereof, and the compensation shall be charged upon and

borne by such of the parties in the cause as the court shall direct. The master shall not retain his report as security for his compensation; but when the compensation is allowed by the court he shall be entitled to an attachment for the amount against the party who is ordered to pay the same, if, upon notice thereof, he does not pay it within the time prescribed by the court.

**Rule 69.**

**PETITION FOR REHEARING.**

Every petition for a rehearing shall contain the special matter or cause on which such rehearing is applied for, shall be signed by counsel, and the facts therein stated, if not apparent on the record, shall be verified by the oath of the party or by some other person. No rehearing shall be granted after the term at which the final decree of the court shall have been entered and recorded, if an appeal lies to the circuit court of appeals or the Supreme Court. But if no appeal lies, the petition may be admitted at any time before the end of the next term of the court, in the discretion of the court.

**Rule 70.**

**SUITS BY OR AGAINST INCOMPETENTS.**

Guardians ad litem to defend a suit may be appointed by the court, or by any judge thereof,

for infants or other persons who are under guardianship or otherwise incapable of suing for themselves. All infants and other persons so incapable may sue by their guardians, if any, or by their *prochein ami*; subject, however, to such orders as the court or judge may direct for the protection of infants and other persons.

**Rule 71.**

FORM OF DECREE.

In drawing up decrees and orders neither the bill nor answer nor other pleadings nor any part thereof nor the report of any master nor any other prior proceeding shall be recited or stated in the decree or order, but the decree and order shall begin, in substance, as follows: " This cause came on to be heard (or to be further heard, as the case may be) at this term and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz: " (Here insert the decree or order.)

**Rule 72.**

CORRECTION OF CLERICAL MISTAKES IN ORDERS AND DECREES.

Clerical mistakes in decrees or decretal orders, or errors arising from any accidental slip or omission, may at any time before the close of the term at which final decree is rendered be corrected by

order of the court, or a judge thereof, upon petition, without the form or expense of a rehearing.

**Rule 73.**

**PRELIMINARY INJUNCTIONS AND TEMPORARY RESTRAINING ORDERS.**

No preliminary injunction shall be granted without notice to the opposite party. Nor shall any temporary restraining order be granted without notice to the opposite party unless it shall clearly appear from specific facts, shown by affidavit or by the verified bill, that immediate and irreparable loss or damage will result to the applicant before the matter can be heard on notice. In case a temporary restraining order shall be granted without notice, in the contingency specified, the matter shall be made returnable at the earliest possible time, and in no event later than 10 days from the date of the order, and shall take precedence of all matters except older matters of the same character. When the matter comes up for hearing the party who obtained the temporary restraining order shall proceed with his application for a preliminary injunction, and if he does not do so the court shall dissolve his temporary restraining order. Upon two days' notice to the party obtaining such temporary restraining order the opposite party may appear and move the dissolution or modification of the order, and in that event the court or judge shall proceed to hear and determine

the motion as expeditiously as the ends of justice may require. Every temporary restraining order shall be forthwith filed in the clerk's office.

**Rule 74.**

**INJUNCTION PENDING APPEAL.**

When an appeal from a final decree in an equity suit granting or dissolving an injunction is allowed by a justice or a judge who took part in the decision of the cause he may, in his discretion, at the time of such allowance make an order suspending, modifying, or restoring the injunction during the pendency of the appeal upon such terms as to bond or otherwise as he may consider proper for the security of the rights of the opposite party.

**Rule 75.**

**RECORD ON APPEAL—REDUCTION AND PREPARATION.**

In case of appeal:

(a) It shall be the duty of the appellant or his solicitor to file with the clerk of the court from which the appeal is prosecuted, together with proof or acknowledgment of service of a copy on the appellee or his solicitor, a præcipe which shall indicate the portions of the record to be incorporated into the transcript on such appeal. Should the appellee or his solicitor desire additional portions of the record incorporated into the transcript, he shall file with the clerk of the court his

præcipe also within 10 days thereafter, unless the time shall be enlarged by the court or a judge thereof, indicating such additional portions of the record desired by him.

(b) The evidence to be included in the record shall not be set forth in full, but shall be stated in simple and condensed form, all parts not essential to the decision of the questions presented by the appeal being omitted and the testimony of witnesses being stated only in narrative form, save that if either party desires it, and the court or judge so directs, any part of the testimony shall be reproduced in the exact words of the witness. The duty of so condensing and stating the evidence shall rest primarily on the appellant, who shall prepare his statement thereof and lodge the same in the clerk's office for the examination of the other parties at or before the time of filing his præcipe under paragraph (a) of this rule. He shall also notify the other parties or their solicitors of such lodgment and shall name a time and place when he will ask the court or judge to approve the statement, the time so named to be at least 10 days after such notice. At the expiration of the time named or such further time as the court or judge may allow, the statement, together with any objections made or amendments proposed by any party, shall be presented to the court or the judge, and if the statement be true, complete, and properly prepared, it shall be approved

by the court or judge, and if it be not true, complete, or properly prepared, it shall be made so under the direction of the court or judge and shall then be approved. When approved it shall be filed in the clerk's office and become a part of the record for the purposes of the appeal.

(c) If any difference arise between the parties concerning directions as to the general contents of the record to be prepared on the appeal, such difference shall be submitted to the court or judge in conformity with the provisions of paragraph (b) of this rule and shall be covered by the directions which the court or judge may give on the subject.

**Rule 76.**

**RECORD ON APPEAL—REDUCTION AND PREPARATION—  
COSTS—CORRECTION OF OMISSIONS.**

In preparing the transcript on an appeal especial care shall be taken to avoid the inclusion of more than one copy of the same paper and to exclude the formal and immaterial parts of all exhibits, documents, and other papers included therein; and for any infraction of this or any kindred rule the appellate court may withhold or impose costs as the circumstances of the case and the discouragement of like infractions in the future may require. Costs for such an infraction may be imposed upon offending solicitors as well as parties.

If in the transcript anything material to either party be omitted by accident or error, the appellate

court, on a proper suggestion or its own motion, may direct that the omission be corrected by a supplemental transcript.

**Rule 77.**

**RECORD ON APPEAL—AGREED STATEMENT.**

When the questions presented by an appeal can be determined by the appellate court without an examination of all the pleadings and evidence, the parties, with the approval of the district court or the judge thereof, may prepare and sign a statement of the case showing how the questions arose and were decided in the district court and setting forth so much only of the facts alleged and proved, or sought to be proved, as is essential to a decision of such questions by the appellate court. Such statement, when filed in the office of the clerk of the district court, shall be treated as superseding, for the purposes of the appeal, all parts of the record other than the decree from which the appeal is taken, and, together with such decree, shall be copied and certified to the appellate court as the record on appeal.

**Rule 78.**

**AFFIRMATION IN LIEU OF OATH.**

Whenever under these rules an oath is or may be required to be taken, the party may, if conscientiously scrupulous of taking an oath, in lieu



thereof make solemn affirmation to the truth of the facts stated by him.

**Rule 79.**

**ADDITIONAL RULES BY DISTRICT COURT.**

With the concurrence of a majority of the circuit judges for the circuit, the district courts may make any other and further rules and regulations for the practice, proceedings, and process, mesne and final, in their respective districts not inconsistent with the rules hereby prescribed, and from time to time alter and amend the same.

**Rule 80.**

**COMPUTATION OF TIME—SUNDAYS AND HOLIDAYS.**

When the time prescribed by these rules for doing any act expires on a Sunday or legal holiday, such time shall extend to and include the next succeeding day that is not a Sunday or legal holiday.

**Rule 81.**

**THESE RULES EFFECTIVE FEBRUARY 1, 1913—OLD RULES ABROGATED.**

These rules shall be in force on and after February 1, 1913, and shall govern all proceedings in cases then pending or thereafter brought, save that where in any then pending cause an order has

been made or act done which can not be changed without doing substantial injustice the court may give effect to such order or act to the extent necessary to avoid any such injustice.

All rules heretofore prescribed by the Supreme Court, regulating the practice in suits in equity, shall be abrogated when these rules take effect.

RULES OF PRACTICE  
OF THE  
COURTS OF THE UNITED STATES  
IN ADMIRALTY AND MARI-  
TIME JURISDICTION



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## INDEX TO ADMIRALTY RULES.

	Rule.	Page.
Admiralty, provisions for amendment of libels in.....	24	22
where third party is permitted to intervene in suits <i>in rem</i> .....	34	26
how stipulations in, are to be given and taken..	35	27
when libellant deemed in default.....	39	28
Adverse proprietors.....	20	20
Affirmance, provisions as to affirmance in suits <i>in rem</i> .....	26	23
Affirmation ( <i>see also</i> Oath).....	26-32, 33-37,	23, 25, 26, 27
 Agent, provisions as to verification of claim by agent, in suits <i>in rem</i> .....	26	23
Amendments, provisions for, in informations and libels in causes of admiralty and maritime jurisdiction....	24	22
amendment of libel where an- swer alleges new facts....	51	33
Answer of defendant to all libels in civil and maritime causes, contents of, etc.....	27	23
exceptions to.....	28	24
effect of defendant omitting or refusing to answer libel on return day, etc.....	29	24
provisions for attachment when answer is not filed, or exceptions taken thereto.....	30	25
where answer would expose defendant to prosecution or punishment for crime, etc.....	31	25
as to right of defendant to require per- sonal answer of libellant, upon oath, to interrogatories at close of answer; proceedings on default of due answer..	32	25
when oath or affirmation of either libellant or defendant to answer an interrogatory may be dispensed with.....	33	26
to what exceptions to answer may be taken.....	36	27
Answer by garnishee, in cases of foreign attachment, pro- visions respecting.....	37	27
not to be verified where amount in dispute does not exceed \$50.....	48	31

	Rule.	Page.
Appeal, how stipulations on, are to be given.....	35	27
from district to circuit courts, how, when, and within what time made.....	45	30
further proof, how taken in a circuit court upon an admiralty appeal.....	49	32
further proof, when taken, to be used in evidence on.....	50	33
provisions as to what shall be contained in, and what shall be omitted from records on appeal from district to circuit courts.....	52	34
Arrests, provisions as to bills, etc., where simple warrant of arrest issues in suits <i>in personam</i> .....	3	14
amount for which warrant of arrest in suits <i>in</i> <i>personam</i> may issue.....	7	15
warrant of arrest of ship, etc., in suits <i>in rem</i> , when, how, and by whom issued and served.....	9	17
provisions for sale of perishable articles arrested...	10	17
proceedings when ship is arrested in suits <i>in rem</i> ...	11	17
of ship in petitory and possessory suits, provisions for.....	20	20
provisions as to bail in certain cases, in suits <i>in</i> <i>personam</i> .....	47	31
Assault on the high seas, suits for, how brought.....	16	19
Attachment in suits <i>in personam</i> where goods, chattels, etc., are attached.....	4	14
provisions for attachment against defendant to compel further answer to libel, etc.....	30	25
may issue to compel answer by libellant to interrogatories in defendant's answer.....	32	25
against party having possession of freight or other proceeds of property attached in pro- ceedings <i>in rem</i> .....	38	28
Bail, provisions as to bail where a simple warrant of arrest issues in suits <i>in personam</i> .....	3	14
in suits <i>in personam</i> , when and how reduced.....	6	14
when and how new sureties may be required.....	6	14
to be taken in suits <i>in personam</i> .....	47	31
Beating.....	16	19
Bonds in cases of arrest in suits <i>in personam</i> .....	3	14
when goods, chattels, etc., are attached in suits <i>in</i> <i>personam</i> .....	4	14
provisions as to bonds to be given on dissolving at- tachment in suits <i>in personam</i> .....	4	14
Bonds, how, when, and before whom given and taken.....	5	15
in suits <i>in personam</i> , when and how bail is reduced.	6	15
when and how new sureties may be required on....	6	15
Bottomry bonds, suits on, how prosecuted.....	18	19

	Rule.	Page.
Claimant, provisions as to stipulation by claimant of property in suits <i>in rem</i> .....	4	14
in suits <i>in rem</i> , how party claiming property shall verify claim.....	26	23
Claims, how proof of claims are made under the limited liability act.....	55	38
Clerks, provisions as to what clerks of district courts shall put in records on appeals to circuit court.....	52	34
Collision, suits for collision, how prosecuted.....	15	18
provisions as to proceedings by claimant of vessel, or respondent proceeded against <i>in personam</i> , against any other vessel contributing to same collision.....	59	40
Commissioners, provisions as to reference to, and powers of same.....	44	30
Commissions, when to issue to take answer of defendant in certain cases.....	33	26
provisions for issuing a commission to take further proof in a circuit court on an admiralty appeal.....	49	32
Consignee, provisions as to verification of claim by consignee, in suits <i>in rem</i> .....	26	23
Costs, to be paid by defendant on opening default in answering.....	29	24
in case of intervention respecting proceeds of sale in registry of court where claim is deserted or dismissed.....	43	30
Crime, defendant may object by answer to answer allegation that would expose him to prosecution and punishment for crime, etc.....	31	25
Cross libel, general provisions as to same.....	53	36
Decree, provisions for writ of execution on final decree for payment of money.....	21	20
Default, provisions as to default if defendant omit or refuse to answer the libel in time.....	29	24
When and how default may be set aside.....	29	24
Dismissal of libel on default of due answer by libellant to interrogatories in answer.....	32	25
Libellant in admiralty suits, when deemed in default.....	39	28
When decree rendered against defendant by default may be reopened.....	40	29
Depositions, provisions for taking further proof in a circuit court on an admiralty appeal by deposition.....	49	32
either party taking further evidence of same witnesses, etc..	50	33

	Rule.	Page.
Dismissal of libel on default of due answer by libellant to interrogatories in answer.....	32	25
when libel may be dismissed on default of libellant.....	39	28
Evidence, oral evidence in nature of further proof in a circuit court on an admiralty appeal, how taken.....	49, 50	32, 33
Exceptions, answer, provisions as to.....	28	24
provisions for attachment against defendant where libel is not filed and exceptions taken thereto.....	30	25
to libel, allegation, or answer, to what they may be taken.....	36	27
Execution, when summary execution to issue when bond or stipulation is given where a simple warrant of arrest in suits <i>in personam</i> .....	3	14
when summary execution to issue when bond or stipulation is given on an attachment being dissolved in suits <i>in personam</i> .....	4	14
nature of, in cases of final decree for payment of money.....	21	20
Fieri facias ( <i>see</i> Execution).....	21	20
Foreign port, suits for moneys taken up in foreign port for supplies, repairs, etc., how brought.....	17	19
Forfeiture ( <i>see</i> Crime).....	31	25
Freight, proceedings against ship and freight <i>in rem</i> by material men.....	12	18
proceedings against ship and freight <i>in rem</i> for mariners' wages.....	13	18
suits against ship and freight, how brought, when founded upon a mere maritime hypothecation of moneys in a foreign port for supplies, repairs, etc.....	17	19
provisions where freight or other proceeds attached in suits <i>in rem</i> are in the hands or possession of any party.....	38	28
Further proof, how taken in a circuit court upon an admiralty appeal.....	49	32
when taken, to be used in evidence on appeal.....	50	33
Garnishee, provisions as to same on foreign attachment.....	37	27
Impertinence, provisions for exceptions to.....	36	27
Imprisonment for debt on process from admiralty court abolished in certain cases.....	47	31
Informations, contents of informations and libels of information upon seizures for any breach of the revenue or navigation or other laws of the United States.....	22	20
provisions as to amendment of.....	24	22



	Rule.	Page.
Interrogatories at close of libel, how answered.....	27	23
Intervenors, how third party is permitted to intervene.....	34	26
stipulations given by, are to be given and taken.....	35	27
proceedings by intervenor respecting claim for delivery to him of proceeds.....	43	30
Irrelevancy, provisions for exceptions to libel, etc., for....	36	27
Libel to be filed before mesne process issues.....	1	13
contents to libel and informations upon seizures or any breach of the revenue, navigation, or other laws of the United States.....	22	20
of, in instance causes similar to maritime... ..	23	21
provisions for amendment of information in causes of admiralty and maritime jurisdiction..	24	22
stipulation by defendant with sureties in case of libel <i>in personam</i> .....	25	22
contents of answer to allegations in libel.....	27	23
when same may be taken <i>pro confesso</i> .....	29	24
of oath or affirmation of either libellant or defendant to an answer to an interrogatory may be dispensed with.....	33	26
to what exceptions to libel may be taken.....	36	27
when and how libel may be granted where answer alleges new facts.....	51	33
where filed, contents thereof, and proceedings on filing same under limited liability act.....	54-57	36, 39
provisions as to proceedings by claimant of vessel or respondent proceeded against <i>in personam</i> against any other vessel contributing to same collision.....	59	40
Libellant may be required by defendant to make personal answer upon oath to interrogatories in answer; proceedings on default of due answer .....	32	25
in admiralty suits, when deemed in default.....	39	28
Limited liability, rules as to proceedings under the limited liability act.....	54-58	36, 40
rules to apply to the circuit courts where cases are pending on appeal from district courts.....	58	40
Mariners' wages, suits for same, how prosecuted.....	13	18
attachment in suits for, against party having possession of freight or other proceeds of property attached in proceedings <i>in rem</i> .....	38	28
Maritime causes, contents of libel in instances causes.....	23	21
provisions for amendment of libels in....	24	22
contents of answer in circuit court in.....	27	23
where third party is permitted to intervene in suits <i>in rem</i> in.....	34	26

	Rule.	Page.
Maritime causes, how stipulations in, are to be given and taken.....	35	27
when libellant deemed in default.....	39	28
hypothecation, suits founded upon, how brought.....	17	19
Marshal to serve process.....	1	13
take bail on a simple warrant of arrest in suits <i>in personam</i> .....	3	14
serve warrant of arrest against ship, etc., in suits <i>in rem</i> .....	9	16
levy execution in cases of final decree for payment of money.....	21	20
make sales of property under decree, etc.....	41	29
when to take bail in suits <i>in personam</i> .....	47	31
Master, proceedings against, for mariners' wages.....	13	18
suits for damages by collision against.....	15	18
upon a mere maritime hypothecation of master in foreign port for moneys taken up for supplies, etc., how prosecuted.....	17	19
Material men, how they may proceed.....	12	18
Mesne process ( <i>see</i> Process).....	1-2	13
Monition, when to issue to third person in suits <i>in rem</i> .....	8	16
provision for in petitory and possessory suits.....	20	20
Navigation, contents of informations and libels of information upon seizures for any breach of the revenue, navigation, or other laws of the United States.....	22	20
Necessaries, suits founded on hypothecation by master for moneys taken up in foreign port for supplies, repairs, etc., how prosecuted.....	17	19
Oath, when oath or affirmation either of libellant or defendant, to an answer to an interrogatory may be dispensed with.....	33	26
provisions as to oaths and suits <i>in rem</i> .....	26	23
Oath or affirmation of libellant required to interrogatories at close of defendant's answer.....	32	25
garnishee to answer in cases of foreign attachment, provisions respecting.....	37	27
to answer not necessary, where amount in dispute does not exceed \$50.....	48	31
Objection may be taken by defendant by answer to answer an allegation which would expose him to punishment for crime, etc.....	31	25
Part owners, nature of process in petitory and possessory suits between them.....	20	20
Penal offense. ( <i>See</i> Crime.)		
Penalty. ( <i>See</i> Crime.)		

	Rule.	Page.
Perishable property. Provisions for sale of.....	18	19
Petitions, when, where, and how filed under the limited liability act, and provisions thereunder.....	54-57	36, 39
Petitory suits, nature of process in.....	20	20
Pilotage, suits for, how prosecuted.....	14	18
Possessory suits, nature of process in.....	20	20
Practice, provisions for, when not provided for by these rules.....	46	31
Proceeds of property sold under decree, disposition of..	41	29
disposition of moneys resulting from proceeds of sale after payment into court.....	42	29
proceedings by intervenor respecting claim for delivery to him of.....	43	30
Process, when mesne process to issue from district court..	1	13
by whom served.....	1	13
in what mesne process consists in suits <i>in personam</i>	2	13
nature of, and how and by whom served in suits <i>in rem</i> .....	9	16
process in petitory and possessory suits between part owners and adverse proprietors.....	20	20
effect of defendant omitting or refusing to answer libel on return day of process, etc.....	29	24
provisions for compulsory process <i>in personam</i> , against garnishee in cases of foreign attachment.	37	27
Proof of claims ( <i>see</i> Claims).....	55	38
Records on appeals from district to circuit courts, what to contain and what not to contain.....	52	34
Reference, provisions as to reference by court to commissioners.....	43	30
Registry of court, proceeds of sale of property under decree to be paid into.....	41	29
disposition of moneys after they have so been paid into.....	42	29
proceedings by intervenor respecting claim for delivery to him of proceeds in, etc.....	43	30
Rehearing, provisions as to same when decree has been entered against defendant, by default.....	40	29
Repairs, suits founded on hypothecation by master for moneys taken up in foreign port for supplies, repairs, etc., how prosecuted.....	17	19
Return-day, effect of defendant omitting or refusing to answer libel on return-day, etc.....	29	24
Return of arrest.....	9	16
Revenue, contents of informations and libels of information upon seizures for any breach of the revenue, navigation, or other laws of the United States.....	22	20

	Rule.	Page.
Sale of perishable articles, etc., provisions for.....	10	17
proceedings as to sale of ship when arrested in suits <i>in rem</i> .....	11	18
of property; by whom made, and disposition of proceeds	41	29
disposition of moneys resulting from proceeds of sale, after payment into court.....	42	29
Salvage, suits for, how prosecuted.....	19	19
attachment against party having possession of freight or other proceeds of property attached in proceedings <i>in rem</i> in salvage cases.....	38	28
Scandal, provisions for exceptions to, in libel, etc.....	36	27
Security, provisions for, in petitory and possessory suits....	20	20
as to security to be given by respondent in cross libel.....	53	36
Seizures, contents of informations and libels of information upon seizures for any breach of the revenue, navigation, or other laws of the United States.....	22	20
Service of warrant of arrest against ship, etc., in suits <i>in rem</i> , how and by whom made.....	9	16
Ship, proceedings when ship is arrested in suits <i>in rem</i> ....	11	17
against, <i>in rem</i> by material men.....	12	18
for mariners' wages.....	13	18
suits for pilotage against.....	14	18
collision against.....	15	18
against, how brought when founded on a mere maritime hypothecation of master for moneys in a foreign port for supplies, repairs, etc.....	17	19
arrest of, in petitory and possessory suits, provisions for.....	20	20
Stipulation. ( <i>See also</i> Bonds.)		
by defendant in case of libel <i>in personam</i> , pro- visions for.....	25	22
provisions as to stipulation by claimant of property in suits <i>in rem</i> .....	26	23
to be given by intervenor in suits <i>in rem</i> ; pro- visions respecting same.....	34	26
when given by intervenor, or appeal, or on appeal, or on any other maritime or ad- miralty proceedings, how to be given.....	35	27
Suits <i>in personam</i> , nature of process in.....	2	13
provisions for taking bail where a simple warrant of arrest issues, and proceedings are to be taken on the bond or stipulation given.....	3	14
dissolving attachment in suits <i>in per-         sonam</i> .....	4	14
when and how bail may be reduced...	6	15
new sureties may be required on bail bond.....	6	15

<i>Suits in personam</i> , amount for which warrant of arrest may issue .....	Rule. 7	Page. 15
suits for pilotage, against whom brought against master or owner for damages by collision, how prosecuted.....	14	18
suits for assault or beating on the high seas <i>in personam</i> only.....	15	18
how brought when founded upon a mere maritime hypothecation of master for moneys in a foreign port for supplies, repairs, etc.....	16	19
provisions in suits on bottomry bonds..	17	19
suits for salvage, how prosecuted.....	18	19
provisions for stipulation on part of the defendant's sureties.....	19	20
when bail is to be taken by marshal where simple warrant of arrest issues.	25	22
imprisonment for debt abolished in certain cases.....	47	31
answer not to be verified where amount in dispute does not exceed \$50.....	47	31
provisions as to proceedings by claimant of vessel or respondent proceeded against <i>in personam</i> against any other vessel contributing to same collision..	48	31
<i>Suits in rem</i> , proceedings when tackle, sails, apparel, etc., are in possession or custody of third person..	59	40
nature of process, and how served, and by whom.....	8	16
proceedings when ship is arrested in suits <i>in rem</i> .....	9	16
in suits against master or owner, by material men.....	11	17
for mariner's wages.....	12	18
against ship, etc., for pilotage.....	13	18
for damages by collision, how prosecuted....	14	18
how brought when founded upon a mere maritime hypothecation of moneys in a foreign port for supplies, repairs, etc.....	15	18
provisions for suits on bottomry bonds.....	17	19
for salvage, how prosecuted.....	18	19
how party claiming property shall verify claim.....	19	20
third party is permitted to intervene....	26	23
provisions where freight or other proceeds attached are in the hands or possession of any party.....	34	26
answer not to be verified where amount in dispute does not exceed \$50.....	38	28
	48	31

	Rule.	Page.
Supplies, suits founded on hypothecation of master for mon- eys taken up in foreign port for supplies, etc., how prose- cuted.....	17	19
Sureties, provisions for stipulation by defendant with sure- ties in case of libel <i>in personam</i> .....	25	22
on a stipulation to be given by intervenor in suits <i>in rem</i> .....	34	26
Surplusage, provisions for exceptions to libel, etc., for.....	36	27
Time for taking appeal from district to circuit courts.....	45	30
rehearing after decree entered against defendant for default.....	40	29
amending libel where answer alleges new facts...	51	33
United States, contents of informations and libels of infor- mation upon seizures for any breach of the revenue, navi- gation, or other laws of the United States.....	22	20
Wages ( <i>see</i> Mariner's wages).....	13-38	18, 28
Warrant ( <i>see</i> Arrest and attachment).....	7-9	15, 16
Writ of execution ( <i>see</i> Execution).....	3-4-21	14, 15, 20

# RULES OF PRACTICE FOR THE COURTS OF THE UNITED STATES IN ADMIRALTY AND MARI- TIME JURISDICTION

ON THE INSTANCE SIDE OF THE COURT, IN PURSUANCE OF THE  
ACT OF AUGUST 23, 1842, CHAPTER 188, 5 STAT., 516.

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## 1.

No *mesne* process shall issue from the district courts in any civil cause of admiralty and maritime jurisdiction until the libel, or libel of information, shall be filed in the clerk's office from which such process is to issue. All process shall be served by the marshal or by his deputy, or, where he or they are interested, by some discreet and disinterested person appointed by the court.

## 2.

In suits *in personam*, the *mesne* process may be by a simple warrant of arrest of the person of the defendant, in the nature of a *capias*, or a warrant of arrest of the person of the defendant, with a clause therein, that if he can not be found, to attach his goods and chattels to the amount sued for; or if such property can not be found, to attach his credits and effects to the amount sued for in the hands of the garnishees named therein; or by a simple monition, in the nature of a summons

to appear and answer to the suit, as the libellant shall, in his libel or information, pray for or elect.

## 3.

In all suits *in personam*, where a simple warrant of arrest issues and is executed, the marshal may take bail, with sufficient sureties, from the party arrested, by bond or stipulation, upon condition that he will appear in the suit and abide by all orders of the court, interlocutory or final, in the cause, and pay the money awarded by the final decree rendered therein in the court to which the process is returnable, or in any appellate court. And upon such bond or stipulation summary process of execution may and shall be issued against the principal and sureties by the court to which such process is returnable, to enforce the final decree so rendered, or upon appeal by the appellate court.

## 4.

In all suits *in personam*, where goods and chattels, or credits and effects are attached under such warrant authorizing the same, the attachment may be dissolved by order of the court to which the same warrant is returnable, upon the defendant whose property is so attached giving a bond or stipulation, with sufficient sureties, to abide by all orders, interlocutory or final, of the court, and pay the amount awarded by the final decree rendered in the court to which the process is returnable, or



in any appellate court; and upon such bond or stipulation summary process of execution shall and may be issued against the principal and sureties by the court to which such warrant is returnable, to enforce the final decree so rendered, or upon appeal by the appellate court.

## 5.

Bonds or stipulations in admiralty suits may be given and taken in open court, or at chambers, or before any commissioner of the court who is authorized by the court to take affidavits of bail and depositions in cases pending before the court, or any commissioner of the United States authorized by law to take bail and affidavits in civil cases.

## 6.

In all suits *in personam*, where bail is taken, the court may, upon motion, for due cause shown, reduce the amount of the sum contained in the bond or stipulation therefor; and in all cases where a bond or stipulation is taken as bail, or upon dissolving an attachment of property as aforesaid, if either of the sureties shall become insolvent pending the suit, new sureties may be required by the order of the court, to be given, upon motion, and due proof thereof.

## 7.

In suits *in personam*, no warrant of arrest, either of the person or property of the defendant,

shall issue for a sum exceeding five hundred dollars, unless by the special order of the court, upon affidavit or other proper proof showing the propriety thereof.

## 8.

In all suits *in rem* against a ship, her tackle, sails, apparel, furniture, boats, or other appurtenances, if such tackle, sails, apparel, furniture, boats, or other appurtenances are in the possession or custody of any third person, the court may, after a due monition to such third person, and a hearing of the cause, if any, why the same should not be delivered over, award and decree that the same be delivered into the custody of the marshal or other proper officer, if, upon the hearing, the same is required by law and justice.

## 9.

In all cases of seizure, and in other suits and proceedings *in rem*, the process, unless otherwise provided for by statute, shall be by a warrant of arrest of the ship, goods, or other thing to be arrested; and the marshal shall thereupon arrest and take the ship, goods, or other thing into his possession for safe custody, and shall cause public notice thereof and of the time assigned for the return of such process and the hearing of the cause, to be given in such newspaper within the district as the district court shall order; and if there is no newspaper published therein, then in

such other public places in the district as the court shall direct.

## 10.

In all cases where any goods or other things are arrested, if the same are perishable, or are liable to deterioration, decay, or injury by being detained in custody, pending the suit, the court may, upon the application of either party, in its discretion, order the same or so much thereof to be sold as shall be perishable or liable to depreciation, decay, or injury; and the proceeds, or so much thereof as shall be a full security to satisfy in decree to be brought into court to abide the event of the suit; or the court may, upon the application of the claimant, order a delivery thereof to him upon a due appraisement, to be had under its direction either upon the claimant's depositing in court so much money as the court shall order, or upon his giving a stipulation, with sureties, in such sum as the court shall direct, to abide by and pay the money awarded by the final decree rendered by the court or the appellate court, if any appeal intervenes as the one or the other course shall be ordered by the court.

## 11.

In like manner, where any ship shall be arrested, the same may, upon the application of the claimant, be delivered to him upon a due appraisement, to be had under the direction of the court, upon the claimant's depositing in court so much money

as the court shall order, or upon his giving a stipulation, with sureties as aforesaid; and if the claimant shall decline any such application, then the court may, in its discretion, upon the application of either party, upon due cause shown, order a sale of such ship, and the proceeds thereof to be brought into court or otherwise disposed of, as it may deem most for the benefit of all concerned.

## 12.

In all suits by material men for supplies or repairs, or other necessities, the libellant may proceed against the ship and freight *in rem*, or against the master or owner alone *in personam*.

## 13.

In all suits for mariners' wages, the libellant may proceed against the ship, freight, and master, or against the ship and freight, or against the owner or the master alone *in personam*.

## 14.

In all suits for pilotage the libellant may proceed against the ship and master, or against the ship, or against the owner alone or the master alone *in personam*.

## 15.

In all suits for damage by collision, the libellant may proceed against the ship and master, or against the ship alone, or against the master or the owner alone *in personam*.

16.

In all suits for an assault or beating on the high seas, or elsewhere within the admiralty and maritime jurisdiction, the suit shall be *in personam* only.

17.

In all suits against the ship or freight, founded upon a mere maritime hypothecation, either express or implied, of the master, for moneys taken up in a foreign port for supplies or repairs or other necessities for the voyage, without any claim of marine interest, the libellant may proceed either *in rem* or against the master or the owner alone *in personam*.

18.

In all suits on bottomry bonds, properly so called, the suit shall be *in rem* only against the property hypothecated, or the proceeds of the property, in whosoever hands the same may be found, unless the master has, without authority, given the bottomry bond, or by his fraud or misconduct has avoided the same, or has subtracted the property, or unless the owner has, by his own misconduct or wrong, lost or subtracted the property, in which latter cases the suit may be *in personam* against the wrongdoer.

19.

In all suits for salvage, the suit may be *in rem* against the property saved, or the proceeds thereof, or *in personam* against the party at whose

request and for whose benefit the salvage service has been performed.

## 20.

In all petitory and possessory suits between part owners or adverse proprietors, or by the owners of a ship or the majority thereof, against the master of a ship, for the ascertainment of the title and delivery of the possession, or for the possession only, or by one or more part owners against the others to obtain security for the return of the ship from any voyage undertaken without their consent, or by one or more part owners against the others to obtain possession of the ship for any voyage, upon giving security for the safe return thereof, the process shall be by an arrest of the ship, and by a monition to the adverse party or parties to appear and make answer to the suit.

## 21.

In all cases of a final decree for the payment of money, the libellant shall have a writ of execution, in the nature of a *feri facias*, commanding the marshal or his deputy to levy and collect the amount thereof out of the goods and chattels, lands and tenements, or other real estate, of the defendant or stipulators.

## 22.

All informations and libels of information upon seizures for any breach of the revenue, or naviga-

tion, or other laws of the United States, shall state the place of seizure, whether it be on land or on the high seas, or on navigable waters within the admiralty and maritime jurisdiction of the United States, and the district within which the property is brought and where it then is. The information or libel of information shall also propound in distinct articles the matters relied on as grounds or causes of forfeiture, and aver the same to be contrary to the form of the statute or statutes of the United States in such case provided, as the case may require, and shall conclude with a prayer of due process to enforce the forfeiture, and to give notice to all persons concerned in interest to appear and show cause at the return-day of the process why the forfeiture should not be decreed.

## 23.

All libels in instance causes, civil or maritime, shall state the nature of the cause; as, for example, that it is a cause, civil and maritime, of contract, or of tort or damage, or of salvage, or of possession, or otherwise, as the case may be; and, if the libel be *in rem*, that the property is within the district; and, if *in personam*, the names and occupations and places of residence of the parties. The libel shall also propound and articulate in distinct articles the various allegations of fact upon which the libellant relies in support of his suit, so that the defendant may be enabled to answer distinctly

and separately the several matters contained in each article; and it shall conclude with a prayer of due process to enforce his rights, *in rem* or *in personam* (as the case may require), and for such relief and redress as the court is competent to give in the premises. And the libellant may further require the defendant to answer on oath all interrogatories propounded by him touching all and singular the allegations in the libel at the close or conclusion thereof.

## 24.

In all informations and libels in causes of admiralty and maritime jurisdiction, amendments in matters of form may be made at any time, on motion to the court, as of course. And new counts may be filed, and amendments in matters of substance may be made, upon motion, at any time before the final decree, upon such terms as the court shall impose. And where any defect of form is set down by the defendant upon special exceptions, and is allowed, the court may, in granting leave to amend, impose terms upon the libellant.

## 25.

In all cases of libels *in personam*, the court may, in its discretion, upon the appearance of the defendant, where no bail has been taken, and no attachment of property has been made to answer the exigency of the suit, require the defendant to give a stipulation, with sureties, in such sum as the court shall direct, to pay all costs and expenses



which shall be awarded against him in the suit, upon the final adjudication thereof, or by any interlocutory order in the progress of the suit.

## 26.

In suits *in rem*, the party claiming the property shall verify his claim on oath or solemn affirmation, stating that the claimant by whom or on whose behalf the claim is made is the true and *bona fide* owner, and that no other person is the owner thereof. And, where the claim is put in by an agent or consignee, he shall also make oath that he is duly authorized thereto by the owner; or if the property be at the time of the arrest in the possession of the master of a ship, that he is the lawful bailee thereof for the owner. And upon putting in such claim, the claimant shall file a stipulation, with sureties, in such sum as the court shall direct, for the payment of all costs and expenses which shall be awarded against him by the final decree of the court, or, upon an appeal, by the appellate court.

## 27.

In all libels in causes of civil and maritime jurisdiction, whether *in rem* or *in personam*, the answer of the defendant to the allegations in the libel shall be on oath or solemn affirmation; and the answer shall be full and explicit and distinct to each separate article and separate allegation in the libel, in the same order as numbered in the

libel, and shall also answer in like manner each interrogatory propounded at the close of the libel.<sup>1</sup>

## 28.

The libellant may except to the sufficiency, or fullness, or distinctness, or relevancy of the answer to the articles and interrogatories in the libel; and if the court shall adjudge the same exceptions, or any of them, to be good and valid the court shall order the defendant forthwith, within such time as the court shall direct, to answer the same, and may further order the defendant to pay such costs as the court shall adjudge reasonable.

## 29.

If the defendant shall omit or refuse to make due answer to the libel upon the return day of the process, or other day assigned by the court, the court shall pronounce him to be in contumacy and default; and thereupon the libel shall be adjudged to be taken *pro confesso* against him, and the court shall proceed to hear the cause *ex parte*, and adjudge therein as to law and justice shall appertain. But the court may, in its discretion, set aside the default, and, upon the application of the defendant, admit him to make answer to the libel, at any time before the final hearing and decree, upon his payment of all the costs of the suit up to the time of granting leave therefor.

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<sup>1</sup> Vide *post*, 49th rule, page —.

## 30.

In all cases where the defendant answers, but does not answer fully and explicitly and distinctly to all the matters in any article of the libel, and exception is taken thereto by the libellant, and the exception is allowed, the court may, by attachment, compel the defendant to make further answer thereto, or may direct the matter of the exception to be taken *pro confesso* against the defendant, to the full purport and effect of the article to which it purports to answer, and as if no answer had been put in thereto.

## 31.

The defendant may object, by his answer, to answer any allegation or interrogatory contained in the libel which will expose him to any prosecution or punishment for crime, or for any penalty or any forfeiture of his property for any penal offense.

## 32.

The defendant shall have a right to require the personal answer of the libellant upon oath or solemn affirmation to any interrogatories which he may, at the close of his answer, propound to the libellant touching any matters charged in the libel, or touching any matter of defense set up in the answer, subject to the like exception as to matters which shall expose the libellant to any prosecution, or punishment, or forfeiture, as is provided in the thirty-first rule. In default of

due answer by the libellant to such interrogatories the court may adjudge the libellant to be in default, and dismiss the libel, or may compel his answer in the premises, by attachment, or take the subject matter of the interrogatory *pro confesso* in favor of the defendant, as the court, in its discretion, shall deem most fit to promote public justice.

## 33.

Where either the libellant or the defendant is out of the country, or unable, from sickness or other casualty, to make an answer to any interrogatory on oath or solemn affirmation at the proper time, the court may, in its discretion, in furtherance of the due administration of justice, dispense therewith, or may award a commission to take the answer of the defendant when and as soon as it may be practicable.

## 34.

If any third person shall intervene in any cause of admiralty and maritime jurisdiction *in rem* for his own interest, and he is entitled, according to the cause of admiralty proceedings, to be heard for his own interest therein, he shall propound the matter in suitable allegations, to which, if admitted by the court, the other party or parties in the suit may be required, by order of the court, to make due answer; and such further proceedings shall be had and decree rendered by the court therein as to law and justice shall appertain. But

every such intervenor shall be required, upon filing his allegations, to give a stipulation, with sureties, to abide by the final decree rendered in the cause, and to pay all such costs and expenses and damages as shall be awarded by the court upon the final decree, whether it is rendered in the original or appellate court.

## 35.

The stipulations required by the last preceding rule, or on appeal, or in any other admiralty or maritime proceeding, shall be given and taken in the manner prescribed by rule fifth as amended.

## 36.

Exceptions may be taken to any libel, allegation, or answer for surplusage, irrelevancy, impertinence, or scandal; and if, upon reference to a master, the exception shall be reported to be so objectionable, and allowed by the court, the matter shall be expunged, at the cost and expense of the party in whose libel or answer the same is found.

## 37.

In cases of foreign attachment, the garnishee shall be required to answer on oath or solemn affirmation as to the debts, credits, or effects of the defendant in his hands, and to such interrogatories touching the same as may be propounded by the libellant; and if he shall refuse or neglect so to do, the court may award compulsory process *in personam* against him. If he admits any debts,

credits, or effects, the same shall be held in his hands, liable to answer the exigency of the suit.

## 38.

In cases of mariners' wages, or bottomry, or salvage, or other proceeding *in rem*, where freight or other proceeds of property are attached to or are bound by the suit, which are in the hands or possession of any person, the court may, upon due application, by petition of the party interested, require the party charged with the possession thereof to appear and show cause why the same should not be brought into court to answer the exigency of the suit; and if no sufficient cause be shown, the court may order the same to be brought into court to answer the exigency of the suit, and upon failure of the party to comply with the order, may award an attachment, or other compulsive process, to compel obedience thereto.

## 39.

If, in any admiralty suit, the libellant shall not appear and prosecute his suit, according to the course and orders of the court, he shall be deemed in default and contumacy; and the court may, upon the application of the defendant, pronounce the suit to be deserted, and the same may be dismissed with costs.

## 40.

The court may, in its discretion, upon the motion of the defendant and the payment of costs,

rescind the decree in any suit in which, on account of his contumacy and default, the matter of the libel shall have been decreed against him, and grant a rehearing thereof at any time within ten days after the decree has been entered, the defendant submitting to such further orders and terms in the premises as the court may direct.

## 41.

All sales of property under any decree of admiralty shall be made by the marshal or his deputy, or other proper officer assigned by the court, where the marshal is a party in interest, in pursuance of the orders of the court; and the proceeds thereof, when sold, shall be forthwith paid into the registry of the court by the officer making the sale, to be disposed of by the court according to law.

## 42.

All moneys paid into the registry of the court shall be deposited in some bank designated by the court, and shall be so deposited in the name of the court, and shall not be drawn out, except by a check or checks signed by a judge of the court and countersigned by the clerk, stating on whose account and for whose use it is drawn, and in what suit and out of what fund in particular it is paid. The clerk shall keep a regular book, containing a memorandum and copy of all the checks so drawn and the date thereof.

## 43.

Any person having an interest in any proceeds in the registry of the court shall have a right, by petition and summary proceeding, to intervene *pro interesse suo* for delivery thereof to him; and upon due notice to the adverse parties, if any, the court shall and may proceed summarily to hear and decide thereon, and to decree therein according to law and justice. And if such petition or claim shall be deserted, or, upon a hearing, be dismissed, the court may, in its discretion, award costs against the petitioner in favor of the adverse party.

## 44.

In cases where the court shall deem it expedient or necessary for the purposes of justice, the court may refer any matters arising in the progress of the suit to one or more commissioners, to be appointed by the court, to hear the parties and make report therein. And such commissioner or commissioners shall have and possess all the powers in the premises which are usually given to or exercised by masters in chancery in reference to them, including the power to administer oaths to and to examine the parties and witnesses touching the premises.

## 45.

All appeals from the district to the circuit court must be made while the court is sitting, or within such other period as shall be designated by the



district court by its general rules, or by an order specially made in the particular suit; or in case no such rule or order be made, then within thirty days from the rendering of the decree.

46.

In all cases not provided for by the foregoing rules, the district and circuit courts are to regulate the practice of the said courts respectively, in such manner as they shall deem most expedient for the due administration of justice in suits in admiralty.

47.

In all suits *in personam*, where a simple warrant of arrest issues and is executed, bail shall be taken by the marshal and the court in those cases only in which it is required by the laws of the State where an arrest is made upon similar or analogous process issuing from the State court.

And imprisonment for debt, on process issuing out of the admiralty court, is abolished in all cases where, by the laws of the State in which the court is held, imprisonment for debt has been, or shall be, hereafter abolished upon similar or analogous process issuing from a State court.

48.

The twenty-seventh rule shall not apply to cases where the sum or value in dispute does not exceed fifty dollars, exclusive of costs, unless the district court shall be of opinion that the proceedings pre-

scribed by that rule are necessary for the purposes of justice in the case before the court.

All rules and parts of rules heretofore adopted, inconsistent with this order, are hereby repealed and annulled.

## 49.

Further proof, taken in a circuit court upon an admiralty appeal, shall be by deposition, taken before some commissioner appointed by a circuit court, pursuant to the acts of Congress in that behalf, or before some officer authorized to take depositions by the thirtieth section of the act of Congress of the 24th of September, 1789, upon an oral examination and cross-examination, unless the court in which such appeal shall be pending, or one of the judges thereof, shall, upon motion, allow a commission to issue to take such depositions upon written interrogatories and cross-interrogatories. When such deposition shall be taken by oral examination, a notification from the magistrate before whom it is to be taken, or from the clerk of the court in which such appeal shall be pending, to the adverse party, to be present at the taking of the same, and to put interrogatories, if he think fit, shall be served on the adverse party or his attorney, allowing time for their attendance after being notified not less than twenty-four hours, and, in addition thereto, one day, Sundays exclusive, for every twenty miles' travel; provided, that the court in which such appeal may be

pending, or either of the judges thereof, may, upon motion, increase or diminish the length of notice above required.

## 50.

When oral evidence shall be taken down by the clerk of the district court, pursuant to the above-mentioned section of the act of Congress, and shall be transmitted to the circuit court, the same may be used in evidence on the appeal, saving to each party the right to take the depositions of the same witnesses, or either of them, if he should so elect.

## 51.

When the defendant, in his answer, alleges new facts, these shall be considered as denied by the libellant, and no replication, general or special, shall be filed, unless allowed or directed by the court on proper cause shown. But within such time after the answer is filed as shall be fixed by the district court, either by general rule or by special order, the libellant may amend his libel so as to confess and avoid, or explain or add to, the new matters set forth in the answer; and within such time as may be fixed, in like manner, the defendant shall answer such amendments.

## 52.

The clerks of the district courts shall make up the records to be transmitted to the circuit courts

on appeals, so that the same shall contain the following:

1. The style of the court.
2. The names of the parties, setting forth the original parties, and those who have become parties before the appeal, if any change has taken place.
3. If bail was taken, or property was attached or arrested, the process of the arrest or attachment and the service thereof; all bail and stipulations; and, if any sale has been made, the orders, warrants, and reports relating thereto.
4. The libel, with exhibits annexed thereto.
5. The pleadings of the defendant, with the exhibits annexed thereto.
6. The testimony on the part of the libellant, and any exhibits not annexed to the libel.
7. The testimony on the part of the defendant, and any exhibits not annexed to his pleadings.
8. Any order of the court to which exception was made.
9. Any report of an assessor or assessors, if excepted to, with the orders of the court respecting the same, and the exceptions to the report. If the report was not excepted to, only the fact that a reference was made, and so much of the report as shows what results were arrived at by the assessor, are to be stated.
10. The final decree.
11. The prayer for an appeal, and the action of the district court thereon; and no reasons of appeal shall be filed or inserted in the transcript.

The following shall be omitted:

1. The continuances.

2. All motions, rules, and orders not excepted to which are merely preparatory for trial.

3. The commissions to take depositions, notices therefor, their captions, and certificates of their being sworn to, unless some exception to a deposition in the district court was founded on some one or more of these; in which case, so much of either of them as may be involved in the exception shall be set out. In all other cases it shall be sufficient to give the name of the witness and to copy the interrogatories and answers, and to state the name of the commissioner, and the place where and the date when the deposition was sworn to; and, in copying all depositions taken on interrogatories, the answer shall be inserted immediately following the question.

The clerk of the district court shall page the copy of the record thus made up, and shall make an index thereto, and he shall certify the entire document, at the end thereof, under the seal of the court, to be a transcript of the record of the district court in the cause named at the beginning of the copy made up pursuant to this rule; and no other certificate of the record shall be needful or inserted.

Hereafter, in making up the record to be transmitted to the circuit clerk on appeal, the clerk of the district court shall omit therefrom

any of the pleading, testimony, or exhibits which the parties by their proctors shall by written stipulation agree may be omitted; and such stipulation shall be certified up with the record.

## 53.

Whenever a cross-libel is filed upon any counter-claim, arising out of the same cause of action for which the original libel was filed, the respondents in the cross-libel shall give security in the usual amount and form, to respond in damages, as claimed in said cross-libel, unless the court, on cause shown, shall otherwise direct; and all proceedings upon the original libel shall be stayed until such security shall be given.

## 54.

When any ship or vessel shall be libeled, or the owner or owners thereof shall be sued, for any embezzlement, loss, or destruction by the master, officers, mariners, passengers, or any other person or persons, of any property, goods, or merchandise shipped or put on board of such ship or vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture done, occasioned, or incurred, without the privity or knowledge of such owner or owners, and he or they shall desire to claim the benefit of limitation of liability provided for in the third and fourth sections of the act of March 3, 1851, entitled "An act to limit the liability of shipowners,

and for other purposes," now embodied in sections 4283 to 4285 of the Revised Statutes, the said owner or owners shall and may file a libel or petition in the proper district court of the United States, as hereinafter specified, setting forth the facts and circumstances on which such limitation of liability is claimed, and praying proper relief in that behalf; and thereupon said court, having caused due appraisement to be had of the amount or value of the interest of said owner or owners, respectively, in such ship or vessel, and her freight, for the voyage, shall make an order for the payment of the same into court, or for the giving of a stipulation, with sureties, for payment thereof into court whenever the same shall be ordered; or, if the said owner or owners shall so elect, the said court shall, without such appraisement, make an order for the transfer by him or them of his or their interest in such vessel and freight, to a trustee to be appointed by the court under the fourth section of said act; and, upon compliance with such order, the said court shall issue a monition against all persons claiming damages for any such embezzlement, loss, destruction, damage, or injury, citing them to appear before the said court and make due proof of their respective claims at or before a certain time to be named in said writ, not less than three months from the issuing of the same; and public notice of such monition shall be given as in other cases, and such further notice served

through the post office, or otherwise, as the court, in its discretion may direct; and the said court shall also, on the application of the said owner or owners, make an order to restrain the further prosecution of all and any suit or suits against said owner or owners in respect of any such claim or claims.

## 55.

Proof of all claims which shall be presented in pursuance of said monition shall be made before a commissioner, to be designated by the court, subject to the right of any person interested to question or controvert the same; and upon the completion of said proofs, the commissioner shall make report of the claims so proven, and upon confirmation of said report, after hearing any exceptions thereto, the moneys paid or secured to be paid into court as aforesaid, or the proceeds of said ship or vessel and freight (after payment of costs and expense), shall be divided *pro rata* amongst the several claimants in proportion to the amount of their respective claims, duly proved and confirmed as aforesaid, saving, however, to all parties any priority to which they may be legally entitled.

## 56.

In the proceedings aforesaid, the said owner or owners shall be at liberty to contest his or their liability, or the liability of said ship or vessel for



said embezzlement, loss, destruction, damage, or injury (independently of the limitation of liability claimed under said act), provided that, in his or their libel or petition, he or they shall state the facts and circumstances by reason of which exemption from liability is claimed; and any person or persons claiming damages as aforesaid, and who shall have presented his or their claim to the commissioner under oath, shall and may answer such libel or petition, and contest the right of the owner or owners of said ship or vessel, either to an exemption from liability, or to a limitation of liability under the said act of Congress, or both.

## 57.

The said libel or petition shall be filed and the said proceedings had in any district court of the United States in which said ship or vessel may be libeled to answer for any such embezzlement, loss, destruction, damage, or injury; or, if the said ship or vessel be not libeled, then in the district court for any district in which the said owner or owners may be sued in that behalf. When the said ship or vessel has not been libeled to answer the matters aforesaid, and suit has not been commenced against the said owner or owners, or has been commenced in a district other than that in which the said ship or vessel may be, the said proceedings may be had in the district court of the district in which the said ship or vessel may be, and where it may be subject to the control of such

court for the purposes of the case as hereinbefore provided. If the ship have already been libeled and sold, the proceeds shall represent the same for the purposes of these rules.

## 58.

All the preceding rules and regulations for proceeding in cases where the owner or owners of a ship or vessel shall desire to claim the benefit of limitation of liability provided for in the act of Congress in that behalf, shall apply to the circuit courts of the United States where such cases are or shall be pending in said courts upon appeal from the district courts.

## 59.

In a suit for damage by collision, if the claimant of any vessel proceeded against, or any respondent proceeded against *in personam*, shall, by petition, on oath, presented before or at the time of answering the libel, or within such further time as the court may allow, and containing suitable allegations showing fault or negligence in any other vessel contributing to the same collision, and the particulars thereof, and that such other vessel or any other party ought to be proceeded against in the same suit for such damage, pray that process be issued against such vessel or party to that end, such process may be issued, and, if duly served, such suit shall proceed as if such vessel or party had been originally proceeded

against; the other parties in the suit shall answer the petition; the claimant of such vessel or such new party shall answer the libel; and such further proceedings shall be had and decree rendered by the court in the suit as to law and justice shall appertain. But every such petitioner shall, upon filing his petition, give a stipulation, with sufficient sureties, to pay to the libellant and to any claimant or new party brought in by virtue of such process, all such costs, damages, and expenses as shall be awarded against the petitioner by the court upon the final decree, whether rendered in the original or appellate court; and any such claimant or new party shall give the same bonds or stipuations which are required in like cases from parties brought in under process issued on the prayer of a libellant.



# GENERAL ORDERS IN BANKRUPTCY

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ADOPTED AND ESTABLISHED BY THE SUPREME  
COURT OF THE UNITED STATES  
NOVEMBER 28, 1898



WASHINGTON  
GOVERNMENT PRINTING OFFICE  
1918



## GENERAL ORDERS IN BANKRUPTCY.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

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In pursuance of the powers conferred by the Constitution and laws upon the Supreme Court of the United States, and particularly by the act of Congress approved July 1, 1898, entitled "An act to establish a uniform system of bankruptcy throughout the United States," it is ordered, on this 28th day of November, 1898, that the following rules be adopted and established as general orders in bankruptcy, to take effect on the first Monday, being the second day, of January, 1899. And it is further ordered that all proceedings in bankruptcy had before that day, in accordance with the act last aforesaid, and being in substantial conformity either with the provisions of these general orders, or else with the general orders established by this court under the bankrupt act of 1867 and with any general rules or special orders of the courts in bankruptcy, stand good, subject, however, to such further regulation by rule or order of those courts as may be necessary or

proper to carry into force and effect the bankrupt act of 1898 and the general orders of this court.

## I.

### DOCKET.

The clerk shall keep a docket, in which the cases shall be entered and numbered in the order in which they are commenced. It shall contain a memorandum of the filing of the petition and of the action of the court thereon, of the reference of the case to the referee, and of the transmission by him to the clerk of his certified record of the proceedings, with the dates thereof, and a memorandum of all proceedings in the case except those duly entered on the referee's certified record aforesaid. The docket shall be arranged in a manner convenient for reference, and shall at all times be open to public inspection.

## II.

### FILING OF PAPERS.

The clerk or the referee shall indorse on each paper filed with him the day and hour of filing, and a brief statement of its character.

## III.

### PROCESS.

All process, summons and subpoenas shall issue out of the court, under the seal thereof, and be



tested by the clerk; and blanks, with the signature of the clerk and seal of the court, may, upon application, be furnished to the referees.

#### IV.

##### CONDUCT OF PROCEEDINGS.

Proceedings in bankruptcy may be conducted by the bankrupt in person in his own behalf, or by a petitioning or opposing creditor; but a creditor will only be allowed to manage before the court his individual interest. Every party may appear and conduct the proceedings by attorney, who shall be an attorney or counsellor authorized to practice in the circuit or district court. The name of the attorney or counsellor, with his place of business, shall be entered upon the docket, with the date of the entry. All papers or proceedings offered by an attorney to be filed shall be indorsed as above required, and orders granted on motion shall contain the name of the party or attorney making the motion. Notices and orders which are not, by the act or by these general orders, required to be served on the party personally may be served upon his attorney.

#### V.

##### FRAME OF PETITION.

All petitions and the schedules filed therewith shall be printed or written out plainly, without abbreviation or interlineation, except where such

abbreviation and interlineation may be for the purpose of reference.

## VI.

### PETITIONS IN DIFFERENT DISTRICTS.

In case two or more petitions shall be filed against the same individual in different districts, the first hearing shall be had in the district in which the debtor has his domicil, and the petition may be amended by inserting an allegation of an act of bankruptcy committed at an earlier date than that first alleged, if such earlier act is charged in either of the other petitions; and in case of two or more petitions against the same partnership in different courts, each having jurisdiction over the case, the petition first filed shall be first heard, and may be amended by the insertion of an allegation of an earlier act of bankruptcy than that first alleged, if such earlier act is charged in either of the other petitions; and, in either case, the proceedings upon the other petitions may be stayed until an adjudication is made upon the petition first heard; and the court which makes the first adjudication of bankruptcy shall retain jurisdiction over all proceedings therein until the same shall be closed. In case two or more petitions shall be filed in different districts by different members of the same partnership for an adjudication of the bankruptcy of said partnership, the court in which the petition

is first filed, having jurisdiction, shall take and retain jurisdiction over all proceedings in such bankruptcy until the same shall be closed; and if such petitions shall be filed in the same district, action shall be first had upon the one first filed. But the court so retaining jurisdiction shall, if satisfied that it is for the greatest convenience of parties in interest that another of said courts should proceed with the cases, order them to be transferred to that court.

## VII.

### PRIORITY OF PETITIONS.

Whenever two or more petitions shall be filed by creditors against a common debtor, alleging separate acts of bankruptcy committed by said debtor on different days within four months prior to the filing of said petitions, and the debtor shall appear and show cause against an adjudication of bankruptcy against him on the petitions, that petition shall be first heard and tried which alleges the commission of the earliest act of bankruptcy; and in case the several acts of bankruptcy are alleged in the different petitions to have been committed on the same day, the court before which the same are pending may order them to be consolidated, and proceed to a hearing as upon one petition; and if an adjudication of bankruptcy be made upon either petition, or for the commission of a single act of bankruptcy, it shall not be necessary to pro-

ceed to a hearing upon the remaining petitions, unless proceedings be taken by the debtor for the purpose of causing such adjudication to be annulled or vacated.

## VIII.

### PROCEEDINGS IN PARTNERSHIP CASES.

Any member of a partnership who refuses to join in a petition to have the partnership declared bankrupt shall be entitled to resist the prayer of the petition in the same manner as if the petition had been filed by a creditor of the partnership, and notice of the filing of the petition shall be given to him in the same manner as provided by law and by these rules in the case of a debtor petitioned against; and he shall have the right to appear at the time fixed by the court for the hearing of the petition, and to make proof, if he can, that the partnership is not insolvent or has not committed an act of bankruptcy, and to make all defences which any debtor proceeded against is entitled to take by the provisions of the act; and in case an adjudication of bankruptcy is made upon the petition, such partner shall be required to file a schedule of his debts and an inventory of his property in the same manner as is required by the act in cases of debtors against whom adjudication of bankruptcy shall be made.

## IX.

## SCHEDULE IN INVOLUNTARY BANKRUPTCY.

In all cases of involuntary bankruptcy in which the bankrupt is absent or can not be found, it shall be the duty of the petitioning creditor to file, within five days after the date of the adjudication, a schedule giving the names and places of residence of all the creditors of the bankrupt, according to the best information of the petitioning creditor. If the debtor is found, and is served with notice to furnish a schedule of his creditors and fails to do so, the petitioning creditor may apply for an attachment against the debtor, or may himself furnish such schedule as aforesaid.

## X.

## INDEMNITY FOR EXPENSES.

Before incurring any expense in publishing or mailing notices, or in traveling, or in procuring the attendance of witnesses, or in perpetuating testimony, the clerk, marshal, or referee may require, from the bankrupt or other person in whose behalf the duty is to be performed, indemnity for such expense. Money advanced for this purpose by the bankrupt or other person shall be repaid him out of the estate as part of the cost of administering the same.

## XI.

## AMENDMENTS.

The court may allow amendments to the petition and schedules on application of the petitioner. Amendments shall be printed or written, signed and verified, like original petitions and schedules. If amendments are made to separate schedules, the same must be made separately, with proper references. In the application for leave to amend, the petitioner shall state the cause of the error in the paper originally filed.

## XII.

## DUTIES OF REFEREE.

1. The order referring a case to a referee shall name a day upon which the bankrupt shall attend before the referee; and from that day the bankrupt shall be subject to the orders of the court in all matters relating to his bankruptcy, and may receive from the referee a protection against arrest, to continue until the final adjudication on his application for a discharge, unless suspended or vacated by order of the court. A copy of the order shall forthwith be sent by mail to the referee, or be delivered to him personally by the clerk or other officer of the court. And thereafter all the proceedings, except such as are required by the act or by these general orders to be had before the judge, shall be had before the referee.

2. The time when and the place where the referees shall act upon the matters arising under the several cases referred to them shall be fixed by special order of the judge, or by the referee; and at such times and places the referees may perform the duties which they are empowered by the act to perform.

3. Applications for a discharge, or for the approval of a composition, or for an injunction to stay proceedings of a court or officer of the United States or of a State, shall be heard and decided by the judge. But he may refer such an application, or any specified issue arising thereon, to the referee to ascertain and report the facts.

### XIII.

#### APPOINTMENT AND REMOVAL OF TRUSTEE.

The appointment of a trustee by the creditors shall be subject to be approved or disapproved by the referee or by the judge; and he shall be removable by the judge only.

### XIV.

#### NO OFFICIAL OR GENERAL TRUSTEE.

No official trustee shall be appointed by the court, nor any general trustee to act in classes of cases.

## XV.

## TRUSTEE NOT APPOINTED IN CERTAIN CASES.

If the schedule of a voluntary bankrupt discloses no assets, and if no creditor appears at the first meeting, the court may, by order setting out the facts, direct that no trustee be appointed; but at any time thereafter a trustee may be appointed, if the court shall deem it desirable. If no trustee is appointed as aforesaid, the court may order that no meeting of the creditors other than the first meeting shall be called.

## XVI.

## NOTICE TO TRUSTEE OF HIS APPOINTMENT.

It shall be the duty of the referee, immediately upon the appointment and approval of the trustee, to notify him in person or by mail of his appointment; and the notice shall require the trustee forthwith to notify the referee of his acceptance or rejection of the trust and shall contain a statement of the penal sum of the trustee's bond.

## XVII.

## DUTIES OF TRUSTEE.

The trustee shall, immediately upon entering upon his duties, prepare a complete inventory of all the property of the bankrupt that comes into his possession. The trustee shall make report to



the court, within twenty days after receiving the notice of his appointment, of the articles set off to the bankrupt by him, according to the provisions of the forty-seventh section of the act, with the estimated value of each article, and any creditor may take exceptions to the determination of the trustee within twenty days after the filing of the report. The referee may require the exceptions to be argued before him, and shall certify them to the court for final determination at the request of either party. In case the trustee shall neglect to file any report or statement which it is made his duty to file or make by the act, or by any general order in bankruptcy, within five days after the same shall be due, it shall be the duty of the referee to make an order requiring the trustee to show cause before the judge, at a time specified in the order, why he should not be removed from office. The referee shall cause a copy of the order to be served upon the trustee at least seven days before the time fixed for the hearing, and proof of the service thereof to be delivered to the clerk. All accounts of trustees shall be referred as of course to the referee for audit, unless otherwise specially ordered by the court.

## XVIII.

### SALE OF PROPERTY.

1. All sales shall be by public auction unless otherwise ordered by the court.

2. Upon application to the court, and for good cause shown, the trustee may be authorized to sell any specified portion of the bankrupt's estate at private sale; in which case he shall keep an accurate account of each article sold, and the price received therefor, and to whom sold; which account he shall file at once with the referee.

3. Upon petition by a bankrupt, creditor, receiver or trustee, setting forth that a part or the whole of the bankrupt's estate is perishable, the nature and location of such perishable estate, and that there will be loss if the same is not sold immediately, the court, if satisfied of the facts stated and that the sale is required in the interest of the estate, may order the same to be sold, with or without notice to the creditors, and the proceeds to be deposited in court.

## XIX.

### ACCOUNTS OF MARSHAL.

The marshal shall make return, under oath, of his actual and necessary expenses in the service of every warrant addressed to him, and for custody of property, and other services, and other actual and necessary expenses paid by him, with vouchers therefor whenever practicable, and also with a statement that the amounts charged by him are just and reasonable.

## XX.

## PAPERS FILED AFTER REFERENCE.

Proofs of claims and other papers filed subsequently to the reference, except such as call for action by the judge, may be filed either with the referee or with the clerk.

## XXI.

## PROOF OF DEBTS.

1. Depositions to prove claims against a bankrupt's estate shall be correctly entitled in the court and in the cause. When made to prove a debt due to a partnership, it must appear on oath that the deponent is a member of the partnership; when made by an agent, the reason the deposition is not made by the claimant in person must be stated; and when made to prove a debt due to a corporation, the deposition shall be made by the treasurer, or, if the corporation has no treasurer, by the officer whose duties most nearly correspond to those of treasurer; if the treasurer or corresponding officer is not within the district wherein the bankruptcy proceedings are pending, the deposition may be made by some officer or agent of the corporation having knowledge of the facts. Depositions to prove debts existing in open account shall state when the debt became or will become due; and if it consists of items maturing at different dates the average due date shall be stated, in

default of which it shall not be necessary to compute interest upon it. All such depositions shall contain an averment that no note has been received for such account, nor any judgment rendered thereon. Proofs of debt received by any trustee shall be delivered to the referee to whom the cause is referred.

2. Any creditor may file with the referee a request that all notices to which he may be entitled shall be addressed to him at any place, to be designated by the post-office box or street number, as he may appoint; and thereafter, and until some other designation shall be made by such creditor, all notices shall be so addressed; and in other cases notices shall be addressed as specified in the proof of debt.

3. Claims which have been assigned before proof shall be supported by a deposition of the owner at the time of the commencement of proceedings, setting forth the true consideration of the debt and that it is entirely unsecured, or if secured, the security, as is required in proving secured claims. Upon the filing of satisfactory proof of the assignment of a claim proved and entered on the referee's docket, the referee shall immediately give notice by mail to the original claimant of the filing of such proof of assignment; and, if no objection be entered within ten days, or within further time allowed by the referee, he shall make an order subrogating the assignee to the original claimant. If

objection be made, he shall proceed to hear and determine the matter.

4. The claims of persons contingently liable for the bankrupt may be proved in the name of the creditor when known by the party contingently liable. When the name of the creditor is unknown, such claim may be proved in the name of the party contingently liable; but no dividend shall be paid upon such claim, except upon satisfactory proof that it will diminish *pro tanto* the original debt.

5. The execution of any letter of attorney to represent a creditor, or of an assignment of claim after proof, may be proved or acknowledged before a referee, or a United States commissioner, or a notary public. When executed on behalf of a partnership or of a corporation, the person executing the instrument shall make oath that he is a member of the partnership, or a duly authorized officer of the corporation on whose behalf he acts. When the person executing is not personally known to the officer taking the proof or acknowledgment, his identity shall be established by satisfactory proof.

6. When the trustee or any creditor shall desire the re-examination of any claim filed against the bankrupt's estate, he may apply by petition to the referee to whom the case is referred for an order for such re-examination, and thereupon the referee shall make an order fixing a time for hearing the petition, of which due notice shall be given by mail addressed

to the creditor. At the time appointed the referee shall take the examination of the creditor and of any witnesses that may be called by either party, and if it shall appear from such examination that the claim ought to be expunged or diminished the referee may order accordingly.

## XXII.

### TAKING OF TESTIMONY.

The examination of witnesses before the referee may be conducted by the party in person or by his counsel or attorney, and the witnesses shall be subject to examination and cross-examination, which shall be had in conformity with the mode now adopted in courts of law. A deposition taken upon an examination before a referee shall be taken down in writing by him, or under his direction, in the form of narrative, unless he determines that the examination shall be by question and answer. When completed it shall be read over to the witness and signed by him in the presence of the referee. The referee shall note upon the deposition any question objected to, with his decision thereon; and the court shall have power to deal with the costs of incompetent, immaterial, or irrelevant depositions, or parts of them, as may be just.

## XXIII.

### ORDERS OF REFEREE.

In all orders made by a referee, it shall be recited, according as the fact may be, that notice was

given, and the manner thereof; or that the order was made by consent; or that no adverse interest was represented at the hearing; or that the order was made after hearing adverse interests.

## XXIV.

### TRANSMISSION OF PROVED CLAIMS TO CLERK.

The referee shall forthwith transmit to the clerk a list of the claims proved against an estate, with the names and addresses of the proving creditors.

## XXV.

### SPECIAL MEETING OF CREDITORS.

Whenever, by reason of a vacancy in the office of trustee, or for any other cause, it becomes necessary to call a special meeting of the creditors in order to carry out the purposes of the act, the court may call such a meeting, specifying in the notice the purpose for which it is called.

## XXVI.

### ACCOUNTS OF REFEREE.

Every referee shall keep an accurate account of his traveling and incidental expenses, and of those of any clerk or other officer attending him in the performance of his duties in any case which may be referred to him; and shall make return of the same under oath to the judge, with proper vouch-

ers when vouchers can be procured, on the first Tuesday in each month.

## XXVII.

### REVIEW BY JUDGE.

When a bankrupt, creditor, trustee, or other person shall desire a review by the judge of any order made by the referee, he shall file with the referee his petition therefor, setting out the error complained of; and the referee shall forthwith certify to the judge the question presented, a summary of the evidence relating thereto, and the finding and order of the referee thereon.

## XXVIII.

### REDEMPTION OF PROPERTY AND COMPOUNDING OF CLAIMS.

Whenever it may be deemed for the benefit of the estate of a bankrupt to redeem and discharge any mortgage or other pledge, or deposit or lien, upon any property, real or personal, or to relieve said property from any conditional contract, and to tender performance of the conditions thereof, or to compound and settle any debts or other claims due or belonging to the estate of the bankrupt, the trustee, or the bankrupt, or any creditor who has proved his debt, may file his petition therefor; and thereupon the court shall appoint a suitable time and place for the hearing thereof, notice of



which shall be given as the court shall direct, so that all creditors and other persons interested may appear and show cause, if any they have, why an order should not be passed by the court upon the petition authorizing such act on the part of the trustee.

## XXIX.

### PAYMENT OF MONEYS DEPOSITED.

No moneys deposited as required by the act shall be drawn from the depository unless by check or warrant, signed by the clerk of the court, or by a trustee, and countersigned by the judge of the court, or by a referee designated for that purpose, or by the clerk or his assistant under an order made by the judge, stating the date, the sum, and the account for which it is drawn; and an entry of the substance of such check or warrant, with the date thereof, the sum drawn for, and the account for which it is drawn shall be forthwith made in a book kept for that purpose by the trustee or his clerk; and all checks and drafts shall be entered in the order of time in which they are drawn, and shall be numbered in the case of each estate. A copy of this general order shall be furnished to the depository, and also the name of any referee or clerk authorized to countersign said checks.

## XXX.

## IMPRISONED DEBTOR.

If, at the time of preferring his petition, the debtor shall be imprisoned, the court, upon application, may order him to be produced upon *habeas corpus*, by the jailor or any officer in whose custody he may be, before the referee, for the purpose of testifying in any matter relating to his bankruptcy; and, if committed after the filing of his petition upon process in any civil action founded upon a claim provable in bankruptcy, the court may, upon like application, discharge him from such imprisonment. If the petitioner, during the pendency of the proceedings in bankruptcy, be arrested or imprisoned upon process in any civil action, the district court, upon his application, may issue a writ of *habeas corpus* to bring him before the court to ascertain whether such process has been issued for the collection of any claim provable in bankruptcy, and if so provable he shall be discharged; if not, he shall be remanded to the custody in which he may lawfully be. Before granting the order for discharge the court shall cause notice to be served upon the creditor or his attorney, so as to give him an opportunity of appearing and being heard before the granting of the order.

## XXXI.

## PETITION FOR DISCHARGE.

The petition of a bankrupt for a discharge shall state concisely, in accordance with the provisions

of the act and the orders of the court, the proceedings in the case and the acts of the bankrupt.

### XXXII.

#### OPPOSITION TO DISCHARGE OR COMPOSITION.

A creditor opposing the application of a bankrupt for his discharge, or for the confirmation of a composition, shall enter his appearance in opposition thereto on the day when the creditors are required to show cause, and shall file a specification in writing of the grounds of his opposition within ten days thereafter, unless the time shall be shortened or enlarged by special order of the judge.

### XXXIII.

#### ARBITRATION.

Whenever a trustee shall make application to the court for authority to submit a controversy arising in the settlement of a demand against a bankrupt's estate, or for a debt due to it, to the determination of arbitrators, or for authority to compound and settle such controversy by agreement with the other party, the application shall clearly and distinctly set forth the subject matter of the controversy, and the reasons why the trustee thinks it proper and most for the interest of the estate that the controversy should be settled by arbitration or otherwise.

## XXXIV.

## COSTS IN CONTESTED ADJUDICATIONS.

In cases of involuntary bankruptcy, when the debtor resists an adjudication, and the court, after hearing, adjudges the debtor a bankrupt, the petitioning creditor shall recover, and be paid out of the estate, the same costs that are allowed to a party recovering in a suit in equity; and if the petition is dismissed, the debtor shall recover like costs against the petitioner.

## XXXV.

## COMPENSATION OF CLERKS, REFEREES, AND TRUSTEES.

1. The fees allowed by the act to clerks shall be in full compensation for all services performed by them in regard to filing petitions or other papers required by the act to be filed with them, or in certifying or delivering papers or copies of records to referees or other officers, or in receiving or paying out money; but shall not include copies furnished to other persons, or expenses necessarily incurred in publishing or mailing notices or other papers.

2. The compensation of referees, prescribed by the act, shall be in full compensation for all services performed by them under the act, or under these general orders; but shall not include expenses necessarily incurred by them in publishing or mailing notices, in traveling, or in perpetuating

testimony, or other expenses necessarily incurred in the performance of their duties under the act and allowed by special order of the judge.

3. The compensation allowed to trustees by the act shall be in full compensation for the services performed by them; but shall not include expenses necessarily incurred in the performance of their duties and allowed upon the settlement of their accounts.

4. In any case in which the fees of the clerk, referee, and trustee are not required by the act to be paid by a debtor before filing his petition to be adjudged a bankrupt, the judge, at any time during the pendency of the proceedings in bankruptcy, may order those fees to be paid out of the estate; or may, after notice to the bankrupt, and satisfactory proof that he then has or can obtain the money with which to pay those fees, order him to pay them within a time specified, and, if he fails to do so, may order his petition to be dismissed. He may also, pending such proceedings, both in voluntary and involuntary cases, order the commissions of referees and trustees to be paid immediately after such commissions accrue and are earned.

## XXXVI.

### APPEALS.

1. Appeals from a court of bankruptcy to a circuit court of appeals, or to the supreme court of a Territory, shall be allowed by a judge of the

court appealed from or of the court appealed to, and shall be regulated, except as otherwise provided in the act, by the rules governing appeals in equity in the courts of the United States.

2. Appeals under the act to the Supreme Court of the United States from a circuit court of appeals, or from the supreme court of a Territory, or from the Supreme Court of the District of Columbia, or from any court of bankruptcy whatever, shall be taken within thirty days after the judgment or decree and shall be allowed by a judge of the court appealed from, or by a justice of the Supreme Court of the United States.

3. In every case in which either party is entitled by the act to take an appeal to the Supreme Court of the United States, the court from which the appeal lies shall, at or before the time of entering its judgment or decree, make and file a finding of the facts and its conclusions of law thereon, stated separately; and the record transmitted to the Supreme Court of the United States on such an appeal shall consist only of the pleadings, the judgment or decree, the finding of facts, and the conclusions of law.

## XXXVII.

### GENERAL PROVISIONS.

In proceedings in equity instituted for the purpose of carrying into effect the provisions of the act, or for enforcing the rights and remedies given

by it, the rules of equity practice established by the Supreme Court of the United States shall be followed as nearly as may be. In proceedings at law instituted for the same purpose the practice and procedure in cases at law shall be followed as nearly as may be. But the judge may, by special order in any case, vary the time allowed for return of process, for appearance and pleading, and for taking testimony and publication, and may otherwise modify the rules for the preparation of any particular case so as to facilitate a speedy hearing.

### XXXVIII.

#### FORMS.

The several forms annexed to these general orders shall be observed and used, with such alterations as may be necessary to suit the circumstances of any particular case.





**RULES FOR PRACTICE AND PROCEDURE  
UNDER SECTION 25 OF AN ACT TO AMEND  
AND CONSOLIDATE THE ACTS  
RESPECTING COPYRIGHT**

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**APPROVED MARCH 4, 1909, TO TAKE EFFECT  
JULY 1, 1909**

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**ADOPTED AND PROMULGATED BY THE SUPREME  
COURT OF THE UNITED STATES  
JUNE 1, 1909**

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**WASHINGTON  
GOVERNMENT PRINTING OFFICE  
1918**



**RULES ADOPTED BY THE SUPREME COURT OF THE UNITED STATES FOR PRACTICE AND PROCEDURE UNDER SECTION 25 OF AN ACT TO AMEND AND CONSOLIDATE THE ACTS RESPECTING COPYRIGHT, APPROVED MARCH 4, 1909. TO GO INTO EFFECT JULY 1, 1909.**

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1.

The existing rules of equity practice, so far as they may be applicable, shall be enforced in proceedings instituted under section twenty-five (25) of the Act of March fourth, nineteen hundred and nine, entitled "An act to amend and consolidate the acts respecting copyright."

2.

A copy of the alleged infringement of Copyright, if actually made, and a copy of the work alleged to be infringed, should accompany the petition, or its absence be explained; except in cases of alleged infringement by the public performance of dramatic and dramatico-musical compositions, the delivery of lectures, sermons, addresses, and so forth, the infringement of copyright upon sculptures and other similar works and in any case where it is not feasible.

3.

Upon the institution of any action, suit or proceeding, or at any time thereafter, and before the entry of final judgment or decree therein, the plaintiff or complainant, or his authorized agent

or attorney, may file with the Clerk of any Court given jurisdiction under section 34 of the Act of March 4, 1909, an affidavit stating upon the best of his knowledge, information and belief, the number and location, as near as may be, of the alleged infringing copies, records, plates, molds, matrices, etc., or other means for making the copies alleged to infringe the copyright, and the value of the same, and with such affidavit shall file with the Clerk a bond executed by at least two sureties and approved by the Court or a Commissioner thereof.

## 4.

Such bond shall bind the sureties in a specified sum, to be fixed by the court, but not less than twice the reasonable value of such infringing copies, plates, records, molds, matrices, or other means for making such infringing copies, and be conditioned for the prompt prosecution of the action, suit, or proceeding; for the return of said articles to the defendant, if they or any of them are adjudged not to be infringements, or if the action abates, or is discontinued before they are returned to the defendant; and for the payment to the defendant of any damages which the Court may award to him against the plaintiff or complainant. Upon the filing of said affidavit and bond, and the approval of said bond, the clerk shall issue a writ directed to the Marshal of the district where the said infringing copies, plates, records, molds, matrices, etc., or other means of making such infringing copies shall

be stated in said affidavit to be located, and generally to any Marshal of the United States directing the said Marshal to forthwith seize and hold the same subject to the order of the Court issuing said writ, or of the Court of the district in which the seizure shall be made.

## 5.

The Marshal shall thereupon seize said articles or any smaller or larger part thereof he may then or thereafter find, using such force as may be reasonably necessary in the premises, and serve on the defendant a copy of the affidavit, writ, and bond by delivering the same to him personally, if he can be found within the district, or if he can not be found, to his agent, if any, or to the person from whose possession the articles are taken, or if the owner, agent, or such person can not be found within the district, by leaving said copy at the usual place of abode of such owner or agent, with a person of suitable age and discretion, or at the place where said articles are found, and shall make immediate return of such seizure, or attempted seizure, to the Court. He shall also attach to said articles a tag or label stating the fact of such seizure and warning all persons from in any manner interfering therewith.

## 6.

A Marshal who has seized alleged infringing articles, shall retain them in his possession, keeping them in a secure place, subject to the order of the Court.

## 7.

Within three days after the articles are seized, and a copy of the affidavit, writ and bond are served as hereinbefore provided, the defendant shall serve upon the clerk a notice that he excepts to the amount of the penalty of the bond, or to the sureties of the plaintiff or complainant, or both, otherwise he shall be deemed to have waived all objection to the amount of the penalty of the bond and the sufficiency of the sureties thereon. If the Court sustain the exceptions it may order a new bond to be executed by the plaintiff or complainant, or in default thereof within a time to be named by the Court, the property to be returned to the defendant.

## 8.

Within ten days after service of such notice, the attorney of the plaintiff or complainant shall serve upon the defendant or his attorney a notice of the justification of the sureties, and said sureties shall justify before the Court or a Judge thereof at the time therein stated.

## 9.

The defendant, if he does not except to the amount of the penalty of the bond or the sufficiency of the sureties of the plaintiff or complainant, may make application to the court for the return to him of the articles seized, upon filing an affidavit stating all material facts and circumstances tending to show that the articles seized are not infringing

ing copies, records, plates, molds, matrices, or means for making the copies alleged to infringe the copyright.

10.

Thereupon the Court in its discretion, and after such hearing as it may direct, may order such return upon the filing by the defendant of a bond executed by at least two sureties, binding them in a specified sum to be fixed in the discretion of the Court, and conditioned for the delivery of said specified articles to abide the order of the Court. The plaintiff or complainant may require such sureties to justify within ten days of the filing of such bond.

11.

Upon the granting of such application and the justification of the sureties on the bond, the Marshall shall immediately deliver the articles seized to the defendant.

12.

Any service required to be performed by any Marshal may be performed by any deputy of such Marshal.

13.

For services in cases arising under this section, the Marshal shall be entitled to the same fees as are allowed for similar services in other cases.



















